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# Picking up the pieces: Transitional justice responses to destruction of tangible cultural heritage

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**Sinéad Coakley** 

Law and Criminal Justice, Liverpool John Moores University, UK and University of  
Liverpool, Liverpool, UK

**Pádraig McAuliffe** 

Law and Social Justice, University of Liverpool, Liverpool, UK

## Abstract

The intentional destruction of tangible cultural heritage is commonplace in contemporary conflict. Heritage has immense social, symbolic, and spiritual value and its destruction reveals a broader attack on cultural identity and coexistence. Transitional justice (TJ) efforts have largely neglected cultural destruction as part of a wider marginalisation of cultural rights. This article considers why this is the case and argues that TJ has a meaningful role to play in engaging with issues of collective identity by countering harmful narratives of difference and recognising the legitimacy of cultural variance. It explores the ways TJ can incorporate cultural destruction within the remit of truth commissions, shape educational curricula and influence physical reconstruction of destroyed heritage. In so doing, it can give effect to the indivisibility and interdependence of civil and political, socio-economic, and cultural rights.

## Keywords

Transitional justice, tangible cultural heritage, truth commissions, reparations, cultural rights

## I. INTRODUCTION

A fundamental principle of human rights, be they civil and political, socio-economic or cultural, is that they are indivisible and interdependent. One set of rights cannot be enjoyed fully without the others. It is assumed that progress in one set of rights makes it easier to exercise other types. Transitional justice (TJ) has traditionally had a liberal-legalist orientation towards civil and political

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### Corresponding author:

Sinéad Coakley, Law and Social Justice, University of Liverpool, Liverpool, UK.

Email: [Sinead.Coakley2@liverpool.ac.uk](mailto:Sinead.Coakley2@liverpool.ac.uk)

rights, though in the last ten years this has been consciously balanced by an increased attention to socio-economic rights.<sup>1</sup> However, TJ ‘has generally and systematically ignored claims of culture,’ and by extension, cultural rights.<sup>2</sup> This article explores how and why TJ has been relatively slow to address cultural rights deprivation, making the argument that without attending to these abuses, key identity-based grievances in the conflict end up being marginalised in comparison to political and distributive injustices, thereby undermining the indivisibility and interdependence of human rights. This is demonstrated in the context of intentional damage to tangible cultural heritage.

Intentional damage of cultural heritage is ‘seemingly now the norm’ in contemporary conflict.<sup>3</sup> Since the end of the Cold War, displays of destroyed or damaged tangible culture heritage are among the most iconic images of war. Few descriptions of the Bosnian war fail to mention the collapse of the *Stari Most* bridge caused by shelling in Mostar. Al Qaeda’s bombing of one of the holiest mosques in Shia Islam, namely the al-Askari mosque in Samarra, and the partial destruction by the Tamil Tigers of the Buddhist Temple of the Tooth in Kandy were key inflection points in the Iraqi and Sri Lankan civil conflicts. Ansar Al Dine’s attacks on the mausoleums of Sufi shrines in Timbuktu and the Taliban’s destruction of the Bamiyan Buddhas were broadcast for the world to see. The Islamic State’s explosions of Nimrud and the temples at Palmyra, to say nothing of the obliterated carvings at Hatra, were aspects of the Syrian civil war that became seared into the global consciousness. At the time of writing, damage to almost 200 cultural heritage sites in Ukraine has been observed since the Russian invasion started in February 2022.<sup>4</sup>

Less attention is paid to destruction of libraries, sites of worship, archives or monuments that do not have what the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage calls ‘outstanding universal value.’<sup>5</sup> Examples include damage to, or destruction

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1. Frank Haldemann and Rachel Kouassi, ‘Transitional Justice without Economic, Social, and Cultural Rights?’ in Eibe Riedel and others (eds), *Economic, Social, and Cultural Rights. Contemporary Issues and Challenges* (Oxford University Press 2014) 498.
  2. Pablo de Greiff, ‘Preface: On Making the Invisible Visible: The Role of Cultural Interventions in Transitional Justice Processes’ in Clara Ramirez-Barat (ed), *Transitional Justice, Culture, and Society: Beyond Outreach* (Social Science Research Council 2014) 12. See also Colin Luoma, ‘Closing the Cultural Rights Gap in Transitional Justice: Developments from Canada’s National Inquiry into Missing and Murdered Indigenous Women and Girls’ (2021) 39 *Netherlands Quarterly of Human Rights* 32, 35–39.
  3. Helen Walasek, ‘Cultural Heritage and Memory after Ethnic Cleansing in Post-Conflict Bosnia-Herzegovina’ (2019) 101 *International Review of the Red Cross* 273, 274.
  4. Vanessa Thorpe, ‘Crimes against history: mapping the destruction of Ukraine’s culture’, *The Guardian*, (24 April 2022) <<https://www.theguardian.com/world/2022/apr/24/crimes-against-history-mapping-the-destruction-of-ukraines-culture>> accessed 4th July 2022. Lest this list exonerate by omission States in the liberal West, it is of course worth bearing in mind that cultural heritage was destroyed and removed consistently throughout the colonial era, as a visit to most major world museums will demonstrate (See Pádraig McAuliffe, ‘Complicity or Decolonization? Restitution of Heritage from ‘Global’ Ethnographic Museums’ (2022) 15 *International Journal of Transitional Justice* 678).
  5. Preamble, Article 1 and Article 2. This treaty does not deal directly with how to treat destruction of tangible cultural heritage *after* conflict. Indeed, none of the main UNESCO Treaties deal directly with how to treat destruction of tangible cultural heritage after conflict. The Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) deals with protection of heritage *during* conflict. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and Convention on the Protection of the Underwater Cultural Heritage (2001) do not address the legacies of intentional destruction in conflict. The Convention for the Safeguarding of the Intangible Cultural Heritage (2003) does not cover tangible cultural heritage. The Convention for the Protection and Promotion of the Diversity of Cultural Expressions (2005) was primarily a response to concerns relating to the trade in media goods and services and deals with cultural expressions produced by artists and cultural professionals.

of, 207 (out of approximately 609) mosques and about 70 Serbian orthodox sites during the Kosovo conflict,<sup>6</sup> the Islamic State's systematic destruction of hundreds of Yezidi shrines, temples, statues and cemeteries in the Sinjar region of Iraq,<sup>7</sup> and the ongoing destruction of sites of Muslim worship in Myanmar's Rakhine State as part of the government's campaign to invalidate the Rohingya as a legitimate national ethnic group.<sup>8</sup> Rare manuscripts, paintings, sculptures, and archaeological findings were also intentionally ruined. This heritage has immense social, symbolic and/or spiritual significance, and these ostensibly lower-key campaigns against cultural heritage are no less significant an aspect of broader attacks on cultural identity and coexistence. Sometimes atrocities are perpetrated by the State, with or without indifference or passive support by society, which raises obvious questions of accountability and repair. When perpetrated by non-State actors they testify to the State's failure to prevent or mitigate such harms.

It is surprising, therefore, that intentional destruction of tangible cultural heritage has traditionally been treated as largely beyond the conceptual apparatus of TJ. In general terms, cultural violence, though invariably manifest in the form of dehumanisation and systemic vulnerability, 'has remained a peripheral focus' in the field.<sup>9</sup> Even scholars who acknowledge its importance eschew detailed treatment on the reasonable grounds that 'its meaning has not been fully developed under international law.'<sup>10</sup> Beyond a compelling recent study of the role of reparations (albeit one exploring both tangible and intangible cultural heritage),<sup>11</sup> international criminal law represents the main area where physical wreckage of important sites has been addressed. The ICTY's treatment of cultural destruction in the *Strugar*, *Prlić et al* and *Jokić* cases has attracted considerable academic attention.<sup>12</sup> So too has the ICC's seminal judgment in the *Al Mahdi* trial relating to Timbuktu's tombs, which was the first time the principle charge in a case was the destruction of cultural heritage as a war crime.<sup>13</sup> Because of their necessarily international and narrow legal focus, these treatments pay scant attention to the broader issues of social change, restoration, and reform that animate TJ. However, the main avenues where TJ attends to these issues, namely truth commissions and reparation programmes, have not addressed destruction of tangible cultural heritage. The authors reviewed the terms of reference for a sample of 33 truth commissions found in the United States Institute of Peace's Truth Commission Digital Collection<sup>14</sup> and a sample of 25 reparations

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6. Andrew Herscher and Andrés Riedlmayer, 'Monument and Crime: The Destruction of Historic Architecture in Kosovo' (2000) 1 Grey Room 108, 112.

7. Benjamin Isakhan and Sofya Shahab, 'The Islamic State's Destruction of Yezidi Heritage: Responses, Resilience and Reconstruction after Genocide' (2020) 20 Journal of Social Archaeology 3, 12–13.

8. Ronan Lee and José Antonio González Zarandona, 'Heritage Destruction in Myanmar's Rakhine State: Legal and Illegal Iconoclasm' (2020) 26 International Journal of Heritage Studies 519, 526–527.

9. Matthew Mullen, 'Reassessing the Focus of Transitional Justice: The Need to Move Structural and Cultural Violence to the Centre' (2015) 28 Cambridge Review of International Affairs 462, 463.

10. Tafadzwa Pasipanodya, 'A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal' (2008) 2 International Journal of Transitional Justice 378, 379 fn 8.

11. Luke Moffett, Dacia Viejo Rose and Robin Hickey, 'Shifting the Paradigm on Cultural Property and Heritage in International Law and Armed Conflict: Time to Talk about Reparations?' (2020) 26 International Journal of Heritage Studies 619.

12. See for example Serge Brammertz and others, 'Attacks against Cultural Heritage as a Weapon of War: Prosecutions at the ICTY' (2016) 14 Journal of International Criminal Justice 1143.

13. See for example Paige Casaly, 'Al Mahdi Before the ICC: Cultural Property and World Heritage in International Criminal Law' (2016) 14 Journal of International Criminal Justice 1199.

14. United States Institute of Peace, 'Truth Commission Digital Collection' (usip.org, 16 March 2011) <<https://www.usip.org/publications/2011/03/truth-commission-digital-collection>> accessed 30 April 2022.

programmes identified in Queens University Belfast's Reparations Database<sup>15</sup> to establish the prevalence of mechanisms dealing specifically with tangible heritage destruction in TJ processes. We could not identify a single mechanism explicitly or implicitly charged with documenting or redressing the removal, obliteration or harm of tangible cultural heritage.

This lacuna is increasingly recognised by contemporary domestic and international heritage professionals, who have begun to acknowledge that their technical endeavours in identifying, managing, and monitoring heritage post-conflict have been divorced from concerns about social recovery. Attention to buildings and monuments that historically characterised the heritage 'industry' now extends to the communities that use them. The primary rationale has shifted from protecting heritage as a scientific or managerial endeavour towards understanding it as a cultural practice of symbolic, ritualistic or social importance to communities and collective groups.<sup>16</sup> Whereas links between heritage and rights were once non-existent, it is now accepted that the post-conflict protection and enhancement of cultural heritage can be framed from a human rights perspective, especially insofar as it addresses the power differentials that prevent meaningful participation by communities in their heritage.<sup>17</sup> In particular, practitioners have been drawing on TJ-adjacent language in realigning their approaches to post-conflict heritage to take into account the broader political, social, and economic context. Psychosocial recovery premised on discursive mechanisms that recognise core beliefs of antagonistic communities about their material surroundings are a feature of contemporary practice.<sup>18</sup> Heritage is seen as having a latent potential 'as a medium for social healing' and bridge-building through greater awareness of shared traditions.<sup>19</sup> Some heritage scholars now argue that TJ represents a potential means to 'reframe' the legacies of past physical devastation of heritage.<sup>20</sup> These developments may explain why Farida Shaheed, the former UN Special Rapporteur for cultural rights, argued that 'a cultural rights-based approach to transitional justice and reconciliation strategies is not rendered the attention it deserves.'<sup>21</sup> Lostal and Cunliffe, as well as Gottlieb, tentatively suggest cultural destruction could be factored into reparations and truth-seeking mechanisms.<sup>22</sup> The incorporation of cultural destruction can improve TJ praxis by giving full effect to the indivisibility of human rights – civil-political, socio-economic *and* cultural – while addressing the hitherto

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15. Queen's University Belfast, 'Reparations Database' (pure.qub.ac.uk, 1 October 2017) <<https://pure.qub.ac.uk/en/datasets/reparations-database>> accessed 30 April 2022.
  16. William Logan, 'Cultural Diversity, Cultural Heritage and Human Rights: Towards Heritage Management as Human Rights-Based Cultural Practice' (2012) 18 *International Journal of Heritage Studies* 231, 241.
  17. Janet Blake, 'Taking a Human Rights Approach to Cultural Heritage Protection' (2011) 4 *Heritage and Society* 199, 200, 217.
  18. Sultan Barakat, 'Necessary Conditions for Integrated Approaches to the Post-Conflict Recovery of Cultural Heritage in the Arab World' (2020) 27 *International Journal of Heritage Studies* 1, 6.
  19. Roger Matthews and others, 'Heritage and Cultural Healing: Iraq in a Post-Daesh Era' (2020) 26 *International Journal of Heritage Studies* 120, 121, 134.
  20. Carlos Jaramillo, 'Memory and Transitional Justice: Toward a New Platform for Cultural Heritage in Post-War Cyprus' (2015) 1 *Santander Art and Culture Law Review* 199, 207.
  21. Office of the High Commissioner for Refugees, 'Integrating Cultural Rights in Transitional Justice Strategies in Post-Conflict Societies' (24 March 2014), <<https://www.ohchr.org/EN/NewsEvents/Pages/Integratingculturalrightsinpst-conflictsocieties.aspx>> accessed 30 April 2022.
  22. Marina Lostal and Emma Cunliffe, 'Cultural Heritage That Heals: Factoring in Cultural Heritage Discourses in the Syrian Peacebuilding Process' (2006) 7 *Historic Environment: Policy & Practice* 248, 252; Yaron Gottlieb, 'Shattered Stones, Shattered Societies: Confronting Destruction of Cultural Property in Post-Transitional Societies' (2005) 23 *Netherlands Quarterly of Human Rights* 613, 613.

neglected issues of heritage and identity as concepts with a latent potential for both healing and disharmony in post-conflict communities.

This article sketches some ways TJ can meaningfully engage with cultural destruction in typical contemporary post-conflict States in the context of negative peaces or frozen conflicts. These are ecologies where recurrence cannot be excluded but where some measure of peace-building is being attempted and a critical mass of domestic actors are genuinely committed to confront, negotiate or manage pre-conflict divisions. It is during these periods that heritage as a 'site of contestation' is most apparent and States are most likely to consciously rework or mediate the foundational narratives of different collective cultural identities that underpin heritage destruction.<sup>23</sup> It builds upon an emerging sense in the field that TJ has an underappreciated potential to engage with those issues of collective identity that lie at the root of conflict and also those other disciplines (like heritage studies) that address issues of identity and reconciliation.<sup>24</sup> Identity-based grievances can, after all, leave post-conflict States 'overwhelmed, to the point of paralysis'<sup>25</sup> Antagonistic identities and belief systems motivate most cultural destruction. Aiken, among others, argues that TJ can help to redefine these identities or reinterpret the social realities that became polarised in conflict.<sup>26</sup> Even if it falls short of this aspiration, forms of TJ explored in this article can provide recognition of cultural destruction and thus promote civic trust and some degree of social integration, if not reconciliation.<sup>27</sup> The failure to take cultural destruction seriously has left a yawning gap in TJ practice. If we take seriously the idea that TJ might 'reinforce impunity by what it ignores,' this unaddressed injustice calls into question its suitability as a tool for rebuilding social meaning and collective belonging.<sup>28</sup>

Before outlining the shape of this article, our decision to focus on *intentional* destruction of *tangible* cultural heritage needs brief justification. By *intentional* destruction, we omit other violations like looting, in which the motivation is pecuniary, as well as collateral damage motivated by military objectives. This allows us to concentrate on premeditated assaults on communal identity through destruction, though these distinctions are admittedly not always clear-cut. The focus on *tangible* cultural objects excludes intangible practices, rituals, oral traditions, values, and performative arts that permit transmission of culture from one generation to the next. To some extent, the distinction is artificial as tangible heritage is usually dependent on intangible beliefs, memory, and interpretations, and many world cultures draw no distinction between the two.<sup>29</sup> Our focus on the tangible reflects the reality that heritage embodied in inanimate objects is different from intangible heritage as practiced by peoples. They are destroyed and reconstructed in different ways, particularly because intangible aspects of culture attach less concern with maintaining a

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23. Dacia Viejo-Rose, 'Reconstructing Heritage in the Aftermath of Civil War: Re-visioning The Nation and the Implications of International Involvement' (2013) 7:2 *Journal of Intervention and Statebuilding* 125, 138.

24. Nevin T Aiken, *Identity, Reconciliation and Transitional Justice: Overcoming Intractability in Divided Societies* (Routledge, 2013) 3.

25. Paige Arthur, 'Introduction: Identities in Transition' in Paige Arthur (ed), *Identities in Transition: Challenges for Transitional Justice in Divided Societies* (Cambridge University Press, 2010) 1.

26. Aiken (n 24) 19.

27. To draw on arguments presented in Pablo de Greiff, 'The Future of the Past: Reflections on the Present State and Prospects of Transitional Justice' (2020) 14 *International Journal of Transitional Justice* 251, 253.

28. Ruben Carranza, 'Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?' (2008) 2 *International Journal of Transitional Justice* 310, 330.

29. Blake (n 17) 203.

changeless essence.<sup>30</sup> Because intangible heritage is such a broad concept and most international agreements on cultural heritage deal primarily with the tangible,<sup>31</sup> ‘consensus and action are more feasible’ for the more narrowly defined material manifestations of culture.<sup>32</sup> Nothing in this materialist focus should suggest that intangible heritage is considered less important than tangible heritage by the authors.

Section 2 outlines some reasons the destruction of cultural heritage has gone unaddressed in TJ practice and advocacy, which demonstrates the field’s failure to give effect to the indivisibility of rights. It then goes on to argue that TJ is equally if not better suited to breaches of cultural rights than the types of bodily integrity and economic rights deprivations the field usually addresses. Section 3 outlines the link between cultural rights and identity, explores how destruction of heritage attempts to sunder it, and outlines how TJ can find innovative ways of dealing with issues of accountability and repair raised by identity-based violations. Section 4 explores promising ways TJ can respond to cultural destruction both by incorporating it within one of its standard mechanisms (truth commissions) and, as suggested above, by informing the parallel work of heritage professionals in changing educational curricula and physical reconstruction of monuments and buildings.

The method adopted in this article is primarily desk research involving (a) a bibliographic scan of the English language literature on transitional justice and cultural destruction, and (b) collating existing data and theory to identify the policy environment, key themes, and gaps. As noted previously, the terms of reference for a sample of truth commissions and reparations programmes were reviewed to establish the prevalence of mechanisms dealing specifically with tangible heritage destruction in TJ processes, or lack thereof. To the extent that international human rights instruments like the International Covenant on Economic, Social and Cultural Rights (ICESCR) are drawn on, rather than a juristic or doctrinal analysis the research method is socio-legal, empirical, and social-theoretical in nature, and is oriented towards examination of the operation of the law in post-conflict contexts.

## 2. CULTURAL DESTRUCTION AS AN ASSAULT ON IDENTITY

While greed and grievance-related theories based on denials of economic and political rights remain predominant, cultural issues reflected in identity are now acknowledged as among ‘the most normatively significant and behaviourally consequential aspects of politics.’<sup>33</sup> Every society sustains a vision of its collective self-identity, which is best understood as a form of socially constructed perception or sense of belonging made manifest in narrative and social practices. Ethnic, religious, linguistic, and other communities sustain this vision through socially constructed criteria of membership that revolve around physical attributes, beliefs, and moral commitments that are understood to represent who the community is.<sup>34</sup> Because identity is socially constructed, it is ‘fluid,

30. William Logan, ‘Closing Pandora’s Box: Human Rights Conundrums in Cultural Heritage Protection’ in Helaine Silverman and D Fairchild Ruggles (eds), *Cultural Heritage and Human Rights* (Springer 2007) 34, 37.

31. But see the aforementioned UNESCO Convention for the Safeguarding of Intangible Cultural Heritage covering ‘practices, representations, expressions, knowledge, skills ... that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.’ (n 5) Article 2.

32. Thomas G Weiss and Nina Connelly, ‘Protecting Cultural Heritage in War Zones’ (2019) 40 *Third World Quarterly* 1, 3.

33. Rogers Smith, ‘Identities, Interests, and the Future of Political Science’ (2004) 2 *Perspectives on Politics* 301, 302.

34. To draw on work on ethnic identity in James Fearon and David Laitin, ‘Violence and the Social Construction of Ethnic Identity’ (2000) 54 *International Organisation* 845, 848.

transversal and movable' – actors and communities can and do switch between plural affiliations.<sup>35</sup> Nevertheless, the core of identity can become 'perceived by group members as relatively stable "truths" or "social facts"' defining what is typical of the in-group.<sup>36</sup> It is this identity that underpins varying demands for positive discrimination or majoritarianism, regional autonomy or national chauvinism, and participation or exclusion.

The discourse surrounding artefacts, monuments, and buildings (or how values are projected onto them) can be central to how the identities of nations and subnational groups are shaped, either within groups who share a common sense of unity, or between distinctly different collectivities.<sup>37</sup> As the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage confirms, cultural heritage 'is an important component of the cultural identity of communities, groups and individuals, and of social cohesion.'<sup>38</sup> The transgenerational memory on which identity is based often requires physical locations in what Nora describes as *lieux de memoire*, or sites of memory.<sup>39</sup> These places and things form 'a key signifier of belonging and difference',<sup>40</sup> 'enact culture and the people themselves',<sup>41</sup> and 'affirm the right to space through their presence across time.'<sup>42</sup> This inherently relational conception of communities as constructed groups necessarily implies constructed 'others'. This symbolic power means tangible cultural heritage can be politicised to serve wider agendas in constructing collective memory and identities. Certain monuments, buildings or sites are valorised by the State to represent hegemonic national narratives of a cultural majority embedded through funding, education and exclusivist forms of conservation. In contrast, Subnational groups might consider their communal heritage just as valid and use it as an ideological foundation on which antagonistic territorial or political ideologies might be based.

Socially and historically situated clashes over the status, significance and/or interpretation can be subsumed within broader political struggles related to denials of political and economic rights. Most conflict ecologies where cultural destruction takes place experienced prior patterns of intercommunal division that permeate social, economic, and political life manifesting in decades- or centuries-long histories of exclusion or domination. This creates fertile ground for polarising communal mythologies of difference and victimisation, domination, and defiance. In such a context, culturally meaningful symbols 'emphasize differences between communities, contain negative images of other communities, or evoke strong opposite reactions from each community.'<sup>43</sup> The built or

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35. Stefanie Kappler, 'The Dynamic Local: Delocalisation and (Re-) Localisation in the Search for Peacebuilding Identity' (2015) 36 *Third World Quarterly* 875, 876.

36. Aiken (n 24) 15.

37. Laurajane Smith, 'Empty Gestures? Heritage and the Politics of Recognition' in Helaine Silverman and D Fairchild Ruggles (eds), *Cultural Heritage and Human Rights* (Springer, New York) 159, 165.

38. UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage (adopted 17 October 2003) UNESCO Doc. 38 C/25, Preamble.

39. Pierre Nora, 'Between Memory and History: Les Lieux De Mémoire' (1989) 26 *Representations* 7, 12.

40. Dacia Viejo Rose, 'Conflict and the Deliberate Destruction of Cultural Heritage' in Helmut Anheier and Yidhisthir Raj Isar (eds), *Conflicts and Tensions* (Sage 2007) 103.

41. Sarah Jane Meharg, 'Identicide and Cultural Cannibalism: Warfare's Appetite for Symbolic Place' (2001) 33 *Journal of Peace Research* 89, 91.

42. Neal Ascherson, 'Cultural Destruction by War and its Impact on Group Identities' in Nicholas Stanley-Price (ed), *Cultural Heritage in Post-War Recovery* (ICCROM 2007) 23.

43. Marc Howard Ross, 'Creating the Conditions for Peacemaking: Theories of Practice in Ethnic Conflict Resolution' (2000) 23 *Ethnic and Racial Studies* 1002, 1018.



monumental environment can express deep divisions, becoming the everyday loci of animosity that embody forms of hegemony and resistance.

These outward signs of the 'other' community can be emphasised by conflict entrepreneurs once conflict commences. Though unjustified by any military necessity and often occurring significant distances from the conflict frontlines, many reasons for intentional cultural destruction have been proffered. Perhaps most prosaically, it undermines opposition morale by attacking places that represent communities' expectations of normalcy and safety, 'shatter[ing] the community's faith they were protected' by the State.<sup>44</sup> As an aspect of psychological warfare, the obliteration of heritage both removes any evidence that a community was present in an area and removes any motivation to return.<sup>45</sup> To the extent the State or region was multicultural, destruction is intended to distort prior mentalities of co-existence.<sup>46</sup> For instance, the Mostar bridge attack notoriously 'was an attack on the very concept of multiethnicity and the co-joined communities it was intended to embody.'<sup>47</sup>

Ba extends this argument by contending that that destruction of Sufi mausoleums in Mali was a core aspect of a broader project of *gouvernement* oriented towards administering a reformed political community, pointing to the Islamic fundamentalism that rejected the cultural practice of Timbuktu residents to pray on tombs.<sup>48</sup> Likewise, ISIS destroyed the Mosul museum as part of a conscious effort to redirect loyalties from secular nationalism towards a more theocratic identity.<sup>49</sup> In Myanmar, the government's attacks on Karen, Mon, and Rohingya heritage publicly affirmed the authority of the majority Bamar ethnic group.<sup>50</sup> In the midst of conflict, the motivation may be more nihilistic than governmental, where cultural cleansing is pursued not merely as a form of erasure of memory,<sup>51</sup> but to shatter the victim community's very sense of who they are and where they come from.<sup>52</sup> The psychological impact of cultural destruction is well-attested. Isakhan and Meskell's survey of local reaction to the destruction of Mosul's Nebi Yunus mosque is typical: 'When I heard of this destruction, it was like trauma for me [...] Every time I am going and seeing this destroyed mosque, I feel like something has been destroyed in my life or inside me'<sup>53</sup> For observant Yezidis 'they think it is now the end of the faith. If you don't have shrines [...] the children are growing up in the last three years knowing nothing about their religion, their heritage, their culture.'<sup>54</sup>

44. *Prosecutor v Al Mahdi* (Reparations Order) ICC-01/12-01/15 (17 August 2017) [85]-[86].

45. Robert Bevan, *The Destruction of Memory: Architecture at War* (Reaktion Books 2016) 67.

46. Barakat (n 18) 2.

47. Bevan (n 45) 39.

48. Umar Ba, 'Governing the Souls and Community: Why do Islamists Destroy World Heritage Sites?' (2020) 35:1 Cambridge Review of International Affairs 1, 4.

49. Emma Cunliffe and Luigi Curini, 'ISIS and Heritage Destruction: A Sentiment Analysis' (2018) 92 *Antiquity* 1094, 1104.

50. Lee and Zarandona (n 8) 521.

51. Harold Kalman, 'Destruction, Mitigation, and Reconciliation of Cultural Heritage' (2017) 23 *International Journal of Heritage Studies* 538, 539.

52. Hiram Abtahi, 'The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia' (2001) 14 *Harvard Human Rights Journal* 1, 2.

53. Benjamin Isakhan and Lynn Meskell, 'UNESCO's Project to "Revive the Spirit of Mosul": Iraqi and Syrian Opinion on Heritage Reconstruction After the Islamic State' (2019) 25 *International Journal of Heritage Studies* 1189, 1198.

54. Interview quotation from Isakhan and Shahab (n 7) 15.

### 3. EXPLAINING THE MARGINALISATION OF CULTURAL DESTRUCTION IN TRANSITIONAL JUSTICE

If Hartley's claim that violations of cultural heritage can serve as an 'indicator of the level of intended dominance via destruction of the social and economic status of an adversary with an assigned identity'<sup>55</sup> is correct, we might expect demands for cultural reform alongside more familiar political and economic claims in antebellum ecologies. In the aftermath of conflict, there is generally a significant demand for recognition of the cultural legitimacy of communities in the face of the dominant cultures in which (i) they are unequally integrated and/or (ii) they saw their heritage go unprotected. However, as Lixinski notes, cultural heritage has been neglected in the TJ literature notwithstanding an evident potential to shape memory.<sup>56</sup> Explanations might be sought in the rhetoric of human rights, where lip-service to indivisibility and interdependence is seldom matched by parity of attention. The marginalisation of cultural destruction may therefore reflect what Carranza called the field's implicit 'hierarchy of egregiousness' where bodily integrity abuses rank above socio-economic crimes and, by extension, abuses of cultural heritage.<sup>57</sup> There is an understandable anthropocentricity that ranks crimes against things below crimes against people, which is perhaps most evident in the ICC Trial Chamber's view in the aforementioned *Al-Mahdi* case that 'even if inherently grave, crimes against property are generally of lesser gravity than crimes against persons.'<sup>58</sup> While the shrines in Timbuktu were being attacked, city residents were having limbs cut off for crimes against social order, ISIS's genocidal campaigns against minorities and use of sexual slavery exceeded their iconoclastic destruction in terms of gravity, and famine-related deaths in Yemen clearly outweighs the bombardment of the ruins of ancient Marib in abhorrence.<sup>59</sup>

A similar moral queasiness applies when comparing economic rights violations. It is far from self-evident why cultural heritage should be prioritised in conditions where the population lack means of survival like food, water, shelter or employment.<sup>60</sup> The 'root cause' argument that is employed to justify attention to economic rights violations is also less applicable to cultural destruction. Unlike issues such as lack of access to land or inequalities, war is not fought over cultural differences, though these are invoked in drawing conflict dividing-lines. The discomfort with asserting the importance of cultural heritage in times of conflict is also a perennial feature of the 'saving lives versus saving stones' discourse that surrounds heritage practitioners.<sup>61</sup> Cultural heritage is 'perceived and treated as a luxury that cannot be afforded by societies coping with multiple over-riding priorities' to be broached only towards the latest stages of transition once 'harder' security and

55. Ralph Hartley, 'To Massacre: A Perspective on Demographic Competition' (2007) 89 *Anthropology Quarterly* 237, 238.

56. Lucas Lixinski, 'Cultural Heritage Law and Transitional Justice: Lessons from South Africa' (2015) 9 *International Journal of Transitional Justice* 278, 278.

57. Carranza (n 28) 316.

58. *Prosecutor v Al Mahdi* (Judgement and Sentence) ICC-01/12-01/15-171 (27 September 2016) [77].

59. UNESCO, 'UNESCO Director-General Condemns Airstrikes on Yemen's Cultural Heritage' UNESCO World Heritage Centre: News and Events, 2 June 2015) <<https://whc.unesco.org/en/news/1291#:~:text=UNESCO%20Director%20General%20condemns%20airstrikes%20on%20Yemen's%20cultural%20heritage,-Tuesday%2C%202%20June&text=The%20Director%20General%20of%20UNESCO,the%20country's%20unique%20cultural%20heritage.>>> accessed 4th July 2022.

60. Gottlieb (n 22) 617.

61. James Cuno and Thomas Weiss, *Cultural Heritage Under Siege: Laying the Foundation for a Legal and Political Framework to Protect Cultural Heritage at Risk in Zones of Armed Conflict* (Getty 2020) 21.

political goals are met.<sup>62</sup> These arguments, however, are no longer tenable. At the macro-level of the State's political imagination or national narrative, the targeting of cultural heritage testifies to the salience of identity-based divisions, leaving a significant need for redress on the level of public perception.<sup>63</sup> At the micro-level, it is clear that recovery in the everyday depends on cultural resilience. Communities will often attempt to restore or demand the restoration of war-damaged heritage and traditions 'to answer to a strong psychosocial need to re-establish the familiar and the cherished following a phase of violent disruption of normal life.'<sup>64</sup> As a former Director-General of UNESCO puts it, heritage is attacked to:

deprive communities of their identity and anchors. They do not choose between human lives and heritage – they destroy both to install fear and chaos. We should not choose either, striving instead to defend both heritage and human lives at the same time.<sup>65</sup>

The fact that heritage receives such a marginal degree of attention seems to reflect the diminished status of cultural rights. There is little question that destruction of tangible cultural heritage and other forms of cultural cleansing violate the guarantees in Article 15(1)(a) ICESCR and Article 27(1) of the Universal Declaration of Human Rights to 'enjoy', 'take part', and 'freely to participate in the life of the community', to say nothing of ICESCR Article 1's right to self-determination wherein all peoples have the right to freely determine their social and cultural development. The UN Special Rapporteur in the field of cultural rights has also explicitly confirmed that such destruction is a violation of human rights.<sup>66</sup> Rights ancillary to participation like rights to cultural identity, cultural survival, and culturally appropriate education are also breached.<sup>67</sup> As Blake notes, 'it is its role in the construction of cultural identity which is the element being protected when cultural heritage is treated as an element within human rights.'<sup>68</sup> These articles entail a negative duty on States to abstain from any conduct that destroys, modifies or desecrates tangible cultural heritage and a positive duty to take steps to protect against violations. The obligation to respect and protect cultural heritage means there should be no regressive measures taken in relation to cultural heritage both in peacetime and during armed conflict.<sup>69</sup>

Despite this, cultural rights survive mostly as a neglected element of human rights, attracting comparatively little academic attention and a perceived lack of normative weight relative to civil-political and socio-economic rights.<sup>70</sup> This is even the case in TJ literature which criticises the field's traditional concern with civil and political rights violations to the exclusion of rights outside the liberal-legalist paradigm. To a certain extent, the 'constructed invisibility' of socio-

62. Barakat (n 18) 1, 4.

63. Arthur (n 25) 4.

64. Nicholas Stanley-Price, 'The Thread of Continuity: Cultural Heritage in Post-War Recovery' in Stanley-Price (ed) (n 42) 1.

65. Irina Bokova, 'UNESCO's Role in Emergency Situations: What Difference Can Soft Power Make in Times of Crisis?' (2017) 70 *Journal of International Affairs* 59, 64.

66. United Nations 'Report of the Special Rapporteur in the Field of Cultural Rights' (2016) UN Doc. A/71/317, 2, 9.

67. Geneva Call, 'Culture Under Fire: Armed Non-State Actors Cultural Heritage in Wartime' (2018) 27 <[https://genevacall.org/wp-content/uploads/2017/10/Cultural\\_Heritage\\_Study\\_Final.pdf](https://genevacall.org/wp-content/uploads/2017/10/Cultural_Heritage_Study_Final.pdf)> accessed 30 April 2022.

68. Janet Blake, 'On Defining the Cultural Heritage' (2000) 49 *International & Comparative Law Quarterly* 61, 77.

69. Committee on Economic, Social and Cultural Rights, 'General Comment No. 21, Right of Everyone to take part in Cultural Life' (21 December 2009) UN doc. E/C.12/GC/21, paras 46, 50.

70. Yvonne Donders, 'The legal framework of the right to take part in cultural life' in Yvonne Donders and Vladimir Volodin (eds), *Human Rights in Education, Science, and Culture: Legal Developments and Challenges* (Ashgate 2007) 232.

economic rights<sup>71</sup> is being addressed in this last decade. However, while the indivisibility of rights is often invoked by those who wish to orient TJ towards structural concerns, this seldom extends beyond socio-economic rights like food, health, housing, and education.<sup>72</sup> This is highly regrettable. As the survey of cultural destruction in Section 2 revealed, socio-economic, civil-political, and cultural violations are mutually reinforcing forms of abuse and any compartmentalisation or omission will inevitably ‘oversimplify the relationship between those unredressed legacies.’<sup>73</sup> Insofar as cultural destruction is inherently connected to group membership and perpetrated on the grounds of a collective identity, it has often served as a proxy for attacks on people or an ‘early warning system’ for genocide or other forms of bodily integrity violation premised on similar intent to eliminate diversity.<sup>74</sup> Indeed, the Myanmar government’s campaign against Rohingya heritage can be understood as a core element of a genocidal policy.<sup>75</sup> Likewise, cultural destruction and socio-economic rights abuses are deeply co-imblicated. The systemic vulnerability that has compelled TJ’s economic turn is usually just as visible in cultural violence as in the structural violence that supports unequal distribution of resources and agency.<sup>76</sup> As Galtung argues, the symbolic violence of cultural dehumanisation ‘makes direct and structural violence look, even feel, right – or at least not wrong.’<sup>77</sup> On the flip side, the validation of cultural identity can positively impact parallel struggles for resources and equity.<sup>78</sup> It is only with the incorporation of cultural rights violations in addition to socio-economic abuses that TJ’s rhetoric of indivisibility can become meaningful.

Another possible explanation for the marginalisation of cultural destruction is conscious or subconscious gate-keeping by policy-makers and scholars. After thirty years as a field of practice, TJ is losing its effective power, by becoming somewhat banalised, persistently advocated and expanded without ever being comprehensively implemented.<sup>79</sup> As Andrieu notes, our sense that a grievance should be addressed always rubs up against the question of whether existing mechanisms are functionally adequate to deal with it. The rise of a *transitional justice and* (gender, art, climate change, race) literature reflects a ‘tendency to overextend’ TJ.<sup>80</sup> The risk that TJ’s limited resources might be spread too thinly is valid.<sup>81</sup> It is inseparable from the worry that we burden TJ with expectations it cannot possibly fulfil, particularly in relation to socio-economic structures that are historically deeply imbricated.

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71. See the pioneering Zinaida Miller, ‘Effects of Invisibility: In Search of the “Economic” in Transitional Justice’ (2008) 2 *International Journal of Transitional Justice* 266, 266.

72. Lucas Lixinski, *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice* (Cambridge University Press 2021) 10.

73. To elaborate on the argument in Carranza (n 28) 314–315.

74. Thomas Weiss and Nina Connelly, *Cultural Cleansing and Mass Atrocities: Protecting Cultural Heritage in Armed Conflict Zones* (Getty 2017) 11.

75. Lee and Zarandona (n 8) 519.

76. Mullen (n 9) 462, 464.

77. Johan Galtung, ‘Cultural Violence’ (1990) 27 *Journal of Peace Research* 291, 291.

78. Smith (n 37) 159.

79. To adapt an argument in Gabriel Blouin-Genest and others, ‘Introduction: Becoming Human Rights Subjects Through New Practices’ in Gabriel Blouin-Genest and others (eds), *Human Rights as Battlefields: Changing Practices and Contestations* (Springer 2018) 3.

80. Kora Andrieu, ‘Dealing With a “New” Grievance: Should Anticorruption Be Part of the Transitional Justice Agenda?’ (2012) 11 *Journal of Human Rights* 537, 538, 542, 553–554.

81. Carranza (n 28) 330.

However, cultural destruction represents a grievance where TJ could channel its limited means towards achievable objectives to a greater degree than economically transformative iterations. While attention to structural injustice and poverty is welcome, significant doubt has been cast on traditional TJ mechanisms applicability to socio-economic rights<sup>82</sup> and strong political resistance in post-conflict environments creates challenges for thoroughgoing transformation.<sup>83</sup> Even strong early advocates of addressing economic violence urge better management of initial expectations of success.<sup>84</sup> Paige Arthur, acknowledging that TJ cannot deal directly with resource distribution or competition in post-conflict States, argues that TJ is better suited to address certain aspects of contemporary conflict over others, most notably those related to identity.<sup>85</sup> While social transformation is 'too high a goal' for TJ, it can achieve significant success in challenging systematic marginalisation on the basis of identity by addressing the dehumanising myths and narratives that underpin, amongst other violations, cultural destruction.<sup>86</sup> A willingness to de-mythologise antagonistic identities or mutually respect the integrity of cultural heritage may make this a more achievable goal than either the liberal-legalist aspiration of right-based democratisation or surmounting what Andrieu identifies as the immense technical and conceptual difficulties of addressing the complex degrees of causality and responsibility that attach to economic violence.<sup>87</sup>

While attention to structural violence requires TJ to affect State-wide socio-economic policies directed towards entire categories of the population, identity-based violations like tangible cultural destruction distil the focus on to specific artefacts and sites. This narrower spotlight may supply the 'close fit between the problem and the solution' that many post-conflict aspirations for TJ lack.<sup>88</sup> Gottlieb, for example, argues that '[d]istinct from more amorphous projects aimed at uniting the people or dealing comprehensively with the past', reparative work like reconstruction of buildings or monuments 'can be well-planned in advance and are relatively easily and timely executed by the government.'<sup>89</sup> How TJ can channel its limited means towards achievable objectives in bringing communities into a more just relationship by addressing cultural destruction is explored in the next section.

#### 4. SOCIAL LEARNING FROM CULTURAL DESTRUCTION

In the aftermath of conflict, the social fabric of communities breaks down and resilience can become diminished, while polarised identities harden in contexts where deeply divided groups must learn to co-exist in a single polity. In such circumstances, the damage *to* heritage can itself become iconic as an embodiment of discourse surrounding the conflict such that continued ruin or reconstruction becomes hugely symbolic. Failure to repudiate the message of perpetrators of damage can embitter communities, and so the protection, repair and memorialisation of heritage have become important

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82. Lars Waldorf, 'Anticipating the Past: Transitional Justice and Socio-Economic Wrongs' (2012) 21 *Social & Legal Studies* 171.

83. Pádraig McAuliffe, *Transformative Transitional Justice and the Malleability of Post-Conflict States* (Edward Elgar 2017) 196–216.

84. Dustin Sharp, 'What Would Satisfy Us? Taking Stock of Critical Approaches to Transitional Justice' (2019) 13 *International Journal of Transitional Justice* 570, 589.

85. Paige Arthur, 'Fear of the Future, Lived through the Past': Pursuing Transitional Justice in the Wake of Ethnic Conflict' in Arthur (n 25) 285.

86. *ibid* 302, 298.

87. Andrieu (n 80) 549.

88. de Greiff (n 27) 254.

89. Gottlieb (n 22) 617.

peacebuilding activities.<sup>90</sup> Where the prime conflict antagonists are neutralised, fear may endure that heritage remains vulnerable to subsequent waves of violence. Even after a peace agreement is finalised, further disputes over the meaning and control of heritage prolong violence at a symbolic and ideological level.<sup>91</sup>

While we might be sceptical that TJ can meaningfully foster liberal democracy or redistribute wealth or opportunity, it can have a more easily demonstrable sociocultural effect in signifying normative change by ‘reconstitut[ing] the collective—across potentially divisive racial, ethnic, and religious lines.’<sup>92</sup> In the aftermath of atrocity, TJ can provide some reassurance insofar as it recreates expectations of ‘shared normative commitments’ between communities.<sup>93</sup> Aiken argues that TJ is most effective in this regard by challenging those animosities linked to collective identity. It can mitigate antagonistic identifications through processes of social learning where ‘former enemies come to reassess the hostile perceptions and negative beliefs they once held about one another’ through contact, dialogue, truth, and reparation.<sup>94</sup> While social learning can form the basis for reconciliation in the long-term, in the short term it can alter antagonistic perceptions of group identity by ‘developing a broader sense of collective identification’ that does not eliminate existing cultural loyalties but instead fosters more inclusive superordinate identities or commitments.<sup>95</sup> This has obvious relevance to the aftermath of cultural heritage violations. There is a near consensus among post-conflict heritage scholars that a starting point for psychosocial recovery from such destruction requires the articulation of a shared vision ‘understanding and synchronising myriad perceptions of cultural heritage held by various groups’ sensitively built through open communication of priorities and necessary compromises.<sup>96</sup> The idea here is not that identities are transformed or reconciliation follows, but rather that fundamentalist ideologies which lead to destruction can be mitigated through education about heritage and diversity.<sup>97</sup> Respect and recognition for different group identities can come from developing local and national awareness of a shared heritage (or, failing this, awareness of the need to protect non-shared heritage) by co-creating new ‘infrastructures of interpretation.’<sup>98</sup>

The rest of this section explores how TJ can form or assist this process of re-interpretation or social learning vis-à-vis heritage through (a) physical reconstruction, (b) reform of educational curricula, and (c) incorporation of cultural destruction within the remit of truth commissions. This is not an exhaustive list of TJ’s potential role; memorials, museums and guarantees of non-repetition can also be employed to respond to damage of tangible artefacts or sites, but considerations of space preclude examination. Within a wider context of socio-political upheaval, the survival of complex cultural environments requires a sustaining economic system and political tolerance for other ways

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90. Polina Levina Mahnad, ‘Protecting Cultural Property in Syria: New Opportunities for States to Enhance Compliance with International Law’ (2017) 99 *International Review of the Red Cross* 1037, 1073.

91. Viejo-Rose (n 23) 125.

92. Ruti Teitel, *Transitional Justice* (Oxford University Press 2001) 225.

93. Pablo de Greiff, ‘Theorizing Transitional Justice’ in Melissa Williams, Rosemary Nagy and Jon Elster (eds), *Transitional Justice* (New York University Press, 2012) 31, 44.

94. Aiken (n 24) 4, 5.

95. *ibid* 18–21.

96. Barakat (n 18) 12, 14.

97. Mahnad (n 90) 1071–1072.

98. Matthews and others (n 19) 134.

of life, to say nothing of a threshold public commitment to peaceful co-existence amongst former antagonists.

#### 4.1 RECONSTRUCTION

Culture destroyed in conflict is frequently rebuilt. Examples are legion, and sometimes iconic: the brick-by-brick reconstruction of Warsaw Castle and Dresden's *Frauenkirche*, Mostar's *Stari Most*, Monrovia's National Museum and National Archive of Liberia, and cross-cultural reconstructions of churches and mosques in divided Nicosia. UNESCO has ongoing projects rebuilding heritage in Timbuktu, Mosul (Iraq) and the Syrian sites of Palmyra and Hatra. A number of scholars have convincingly argued that such reconstruction can serve as a form of collective community reparation.<sup>99</sup> Rehabilitation of damaged or destroyed heritage can restore an injured community to its *status quo ante* and can serve as a form of accountability insofar as it (i) acknowledges the wrongfulness of act perpetrated against the community and (ii) obliges those responsible to provide a remedy.<sup>100</sup> There are limitations – as Bevan reminds us, it is physically impossible to repair some tangible heritage.<sup>101</sup> Even where possible, as the ICTY Trial Chamber noted in their consideration of Dubrovnik's cultural destruction in the *Jokić* sentencing decision, rehabilitation/restitution can never fully restore its value 'because a certain amount of original, historically authentic, material will have been destroyed.'<sup>102</sup> Nevertheless, where local actors are consulted in the design and implementation of reconstruction projects,<sup>103</sup> the work can give effect to how people comprehend and reconnect to artefacts or their inherited built environment. As an additional effect, reconstruction can become a form of 'psychological restoration' that promotes the return of the forcibly displaced.<sup>104</sup>

From the foregoing, it is clear from existing scholarly work that reconstruction can be an effective form of reparations. The point will not be laboured. Of more interest is the fact that most reconstruction is not approached with reparation as a key, or even partial, motivation. Much of the most high-profile reconstruction is undertaken multilaterally by international donors and NGOs where there is no possibility for those responsible to provide a remedy or acknowledge wrongdoing. Reparative purposes are absent, even if other TJ-related values are present. For the *Stari Most* reconstruction, the international community adopted an institutionally directed narrative of reconciliation figuratively and literally bridging two ethnic communities.<sup>105</sup> While local participation and consultation form part of reparative best practice, it is consistently conspicuous by its absence in multilateral reconstruction where national communities are passive recipients of international assistance.<sup>106</sup> Indeed, to the extent that that the 'happy ending' of reconciliation is emphasised

99. Moffett, Viejo Rose and Hickey (n 11) 625–626; Lostal and Cunliffe (n 22) 253; Gottlieb (n 22) 619; Ana Filipa Vrdoljak, 'Cultural Heritage, Transitional Justice, and Rule of Law', in Francesco Francioni and Ana Filipa Vrdoljak (eds), *The Oxford Handbook of International Cultural Heritage Law* (Oxford University Press, 2020) 189.

100. Moffett, Viejo Rose and Hickey (n 11), 621–622, 628.

101. Bevan (n 45) 60.

102. *Prosecutor v. Jokić* (Sentencing Judgement) IT-01-42/1-S (18 March 2004) [52].

103. As stressed by Lostal and Cunliffe (n 20) 250; and Moffett, Viejo Rose and Hickey (n 11) 624.

104. Walasek (n 3) 284, using the example of Bosnia. Reconstruction has also promoted refugee return to Yazidi areas in Northern Iraq (Isakhan and Shahab (n 7) 18).

105. Susan Forde, 'The Bridge on the Neretva: Stari Most as a Stage of Memory in Post-Conflict Mostar, Bosnia–Herzegovina' (2016) 51 *Cooperation and Conflict* 467, 468. Forde argues the bridge reconstruction has done little to remedy the ethnic divide in the city, a position that is widely shared.

106. Barakat (n 18) 11.

in reconstruction, there is a significant risk of underplaying the hurt caused by destruction.<sup>107</sup> National governments also undertake reconstruction with little reparative impulse, even rebuilding heritage where there is no community to use it. Diefendorf serves as an example, where West German churches were revived even where there were insufficient congregations to sustain them.<sup>108</sup>

As Meskell and Scheermeyer note, post-conflict heritage pageantry 'is often more about national performance than social justice and restitution.'<sup>109</sup> The intention of rebuilding is not so much to acknowledge responsibility for damage or failure to protect as to recast the State's narrative of the conflict, with a top-down emphasis on 'what is perceived to be a previous sense of national unity.'<sup>110</sup> Some reconstruction is entirely decentralised and bottom-up, undertaken exclusively by local actors. In Bosnia, websites virtually recreating lost heritage were developed by displaced communities immediately after damage, which was then restored to symbolise the overturning of ethnic cleansing.<sup>111</sup> Likewise, volunteer groups of Yezidis have come together to reconstruct their sacred spaces.<sup>112</sup> Given the logical impossibility of self-reparation, this is another example of reconstruction without a reparative impulse.

We can say, therefore, that most heritage reconstruction lacks the compensatory or recognition purposes that would make it meaningfully reparative. This is unsurprising as reconstruction is never simply a process of physical repair, but rather represents the 'establishment of a new meaningscape' that resituates the objects or sites within a revised national narrative.<sup>113</sup> Given that heritage can essentialise difference, this meaningscape is inevitably contested as there is seldom, if ever, a shared vision for the recovery of heritage amidst the competing narratives of heritage's meaning that led to destruction in the first place.<sup>114</sup> In Bosnia, for example, bottom-up reconstruction of markers of identity often occurred in the face of hostility from other communities who had earlier destroyed it.<sup>115</sup> The rehabilitation of heritage is a far more agonistic process than is suggested by flawed metaphors for healing like the Mostar bridge.<sup>116</sup> Even without overt hostility, selective reconstruction inevitably creates 'hierarchies of victimhood' that undermine any re-emerging tranquillity<sup>117</sup> or reinscribe old power relations with slight variations. It will often be the case that some groups will disagree with the reconstruction of certain aspects of tangible heritage, seeing it as triumphalist, chauvinistic or a provocation.

107. Kalman (n 51) 540.

108. Jeffrey Diefendorf, 'West Germany after World War II: Planning and the Role of Preservation Thinking' in Sultan Barakat, Jon Calame and Esther Charlesworth (eds), *Urban Triumph or Urban Disaster? Dilemmas of Contemporary Post-war Reconstruction* (University of York Post-War Reconstruction Development Unit 1998) 7.

109. Lynn Meskell and Colette Scheermeyer, 'Heritage as Therapy: Set Pieces from the New South Africa' (2008) 13 *Journal of Material Culture* 153, 154.

110. Michael Rowlands, 'Civilization, Violence and Heritage Healing in Liberia' (2008) 13 *Journal of Material Culture* 135, 138.

111. Walasek (n 3) 290.

112. Isakhan and Shahab (n 7) 17.

113. Marie Louise Stig Sørensen and Dacia Viejo-Rose, 'Introduction: The Impact of Conflict on Cultural Heritage: A Biographical Lens' in Marie Louise Stig Sørensen and Dacia Viejo-Rose (eds), *War and Cultural Heritage: Biographies of Place* (Cambridge University Press 2015) 5.

114. Sultan Barakat, 'Postwar Reconstruction and the Recovery of Cultural Heritage: Critical Lessons from Last Fifteen Years' in Stanley-Price (ed) (n 42) 38.

115. Walasek (n 3) 291.

116. Annika Björkdahl and Susanne Buckley-Zistel, 'Spatializing Peace and Conflict: An Introduction' in Annika Björkdahl and Susanne Buckley-Zistel (eds), *Spatializing Peace and Conflict* (Palgrave Macmillan 2016) 9.

117. Moffett, Viejo Rose and Hickey (n 11) 629.



These disputes may be intractable in the short-term and transitional societies need to develop methods or mechanisms to mitigate them if satisfactory resolution proves impossible. For these reasons, Barakat argues reconstruction 'is about more than buildings: it is a wider process of cultural identification.'<sup>118</sup> The archaeologists, architects, conservationists, and planners who undertake reconstruction (be they international, national or local) are beginning to grapple with symbolic and identity factors beyond the material in addressing key questions like preserving the damage as a salutary lesson for the future or assuaging anger over rebuilding. Consultation and negotiation with those affected remains imperative in societies where memory is fragmented, not so much for discovering the needs of victim communities as in reparative approaches but to develop 'an interpretation that can be negotiated and offer a diverse reading of a site' where dissensus over heritage exists.<sup>119</sup> It is in this potentially more agonistic process of negotiation that TJ can play its most valuable role. The avenues emphasised by heritage experts to align the technical work of reconstruction with social need – through workshops, focus groups, surveys, and outreach with the 'other'<sup>120</sup> – replicates the methods TJ best practice uses to secure buy-in for any measures pursued.<sup>121</sup> It may also provide the organising principle. In divided States or communities where exclusivist interpretations of heritage predominate, TJ as an ethic 'provides a platform for opening up the dialogue necessary to set conditions for "a future"' that reconstruction might represent.<sup>122</sup> The very process of negotiating and discussing sites or objects of heritage can provide a 'theatre' where the cultural identities and values underpinning them can be negotiated, re-appraised, and reconstructed.<sup>123</sup> As such, it can facilitate what Aiken calls instrumental learning: the process whereby relationships and perceptions between previously antagonistic groups are subject to new forms of constructive contact.<sup>124</sup>

This will not always be the case, of course. As Paludan-Müller reminds us, in States like Cyprus and Bosnia, the reconstruction of physical symbols of diversity and complexity amidst consultation and negotiation has not been matched by a commensurate 'capacity to retrieve and reactivate positive memories of multi-ethnic co-existence.'<sup>125</sup> Some problems relating to perceptions of heritage may be intractable and the aforementioned shared vision may never fully cohere, but TJ need not be conceived entirely in such goal-oriented terms. There is a growing acceptance (albeit one largely flowing from the field's failure to achieve the ambitious goals set for it) that it may be preferable to treat TJ as a process in which the outcome is uncertain but the undertaking is valuable in itself as a constructive exercise in civic affairs.<sup>126</sup> There is good reason to believe that if embedded within forms of ethnically-balanced reconstruction programmes, like the numerical balance between Christian and Muslim monuments, as in Kosovo, or reciprocal reconstruction in

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118. Barakat (n 18) 11.

119. Viejo-Rose (n 40) 113.

120. Viejo-Rose (n 23) 140; Stanley-Price (n 64) 14; Barakat (n 18) 11.

121. Arthur (n 85) 286.

122. Jaramillo (n 20) 208.

123. Smith (n 37) 165 drawing on Raphael Samuel, *Theatres of Memory: Past and Present in Contemporary Culture* (Verso Books 1994).

124. Aiken (n 24) 4.

125. Carsten Paludan-Müller, 'Postscript 2: When Memory Takes Place' in Sørensen and Dacia Viejo-Rose (eds) (n 113) 267.

126. A James McAdams, 'Transitional Justice: The Issue That Won't Go Away' (2011) 5(2) *International Journal of Transitional Justice* 304, 311–312.

Cyprus, and a broader de-stigmatisation strategy, this dialogue can at the very least serve as a confidence-building measure.<sup>127</sup>

## 4.2 EDUCATION

As noted in Section 2, the means by which a society reifies, neglects or condemns artefacts or the built environment can condition attitudes towards heritage when conflict erupts. Societies celebrate certain types of heritage and implicitly or explicitly marginalising alternative forms of heritage as ‘other’ to explain history and maintain existing social order.<sup>128</sup> The State constructs heritage and its meaning by embedding ideas through socialisation and education.<sup>129</sup> It is where the education system has failed to valorise cultures of co-existence or challenge preconceptions about the roots of other communities that propagandistic discourses of the type seen in Mali, Bosnia, and Myanmar can most easily disseminate distorted cultural narratives that employ tangible heritage as “evidence” of how one group has greater legitimacy to power or claims to a territory.<sup>130</sup> Heritage destruction generally exacerbates divisions that come from prior essentialisation of differences, often State-sanctioned through the educational system or the product of education systems that cater for distinct ethnic, religious or geographic communities.

The Committee on Economic, Social and Cultural Rights maintains that the right to participate in culture implies an obligation to promote heritage through education.<sup>131</sup> To the extent that prior imbalances and exclusions in school curricula are a precursor to destruction of tangible cultural heritage, heritage experts have long argued that tailored education programmes can foster an understanding and appreciation of cultural diversity among the decision-makers of tomorrow, potentially serving to reduce the threat to cultural property.<sup>132</sup> UNESCO has implemented many initiatives and campaigns to highlight the importance of cultural heritage protection through education.<sup>133</sup> UNESCO’s World Heritage Education Programme is premised on the notion that education can reduce the threat to cultural heritage by raising awareness of the value of heritage and encouraging participation in cultural heritage conservation.<sup>134</sup> This need is heightened in the aftermath of conflict. Scholars argue that there is a need to focus on cultural education, ‘to get people to think about education in a different way.’<sup>135</sup> For example, damage to indigenous artefacts and sites in Sierra Leone drew attention to the fact that indigenous histories had not been adequately incorporated into

127. Stanley-Price (n 64) 11.

128. Paul Connerton, *How Societies Remember* (Cambridge University Press 1989) 1.

129. Sara McDowell, ‘Heritage, Memory and Identity’ in Brian Graham and Peter Howard (eds), *The Ashgate Research Companion to Heritage and Identity* (Ashgate 2008) 40.

130. Dacia Viejo-Rose and Marie Louise Stig Sørensen, ‘Cultural Heritage and Armed Conflict: New Questions for an Old Relationship’ in Sørensen and Dacia Viejo-Rose (eds) (n 113) 290.

131. CESCR (n 69) para 53.

132. Kalman, (n 51) 547, citing Christin Döninghaus.

133. See Alicja Jagielska-Burduk, Mateusz Pszczyński and Piotr Stec, ‘Cultural Heritage Education in UNESCO Cultural Conventions’ (2021) 12 Sustainability 3548.

134. See for example the World Heritage in Young Hands Education Resource Kit which is targeted at second-level students (Young People’s World Heritage Education Project, ‘An Educational Resource Kit for Teachers’ (Paris, 2002) <<https://whc.unesco.org/uploads/activities/documents/activity-54-19.pdf>> accessed 30 April 2022.

135. Cuno and Weiss (n 61) 74.

national history.<sup>136</sup> Similarly, in Iraq improved education was proposed as an essential response to destruction and looting of museum properties.<sup>137</sup>

The nature of contemporary conflict makes incorporating cultural heritage within education programmes imperative. As Bar-Tal and others argue, political socialisation begins early in conflicted societies as one-sided narratives of the conflict are deliberately inculcated to form coherent systems of beliefs that support the conflict or violations committed therein.<sup>138</sup> Failure to confront the distortion of cultural differences via propaganda or stereotyping allows polarisation of cultural identities to continue among future generations. History education is assumed to promote more peaceful cohabitation in the future by explaining why the conflict happened and delivering a new narrative that enhances inner cohesion in a divided society.<sup>139</sup>

Pointing to experiences in States like Guatemala, Northern Ireland, Spain, South Africa and Sierra Leone, Cole and Murphy view history education that specially responds to post-conflict wrongdoing as *belonging* to the aspect of TJ that serves the construction of a more democratic society by conditioning how social cohesion and patriotism are fostered.<sup>140</sup> Jelin, likewise, argues that the *nunca mas* ethos of TJ should underpin formal educational initiatives in schools as well as museums and memorial sites.<sup>141</sup> To the extent that schools as officially sanctioned institutions grapple honestly with violations like cultural property destruction and their underlying reasons, they can serve as an aspect of moral repair.<sup>142</sup> These initiatives tend to mix knowledge of the past with a distinct social ethos. In terms of knowledge, textbooks and other instructional materials 'bear the imprimatur of the state and reach large numbers of students.'<sup>143</sup> Diffusing knowledge about the origins, purpose, and destruction of heritage must be coordinated, framed, and systematised. Heritage knowledge can be developed by drawing on stakeholder communities like civil society, museums, and professional groups of historians and/or archaeologists to trace long-term continuities and shared affinities in heritage. Where truth commissions incorporate heritage destruction in their remits, their reports and findings can be incorporated into school curricula.<sup>144</sup> In this sense, revised historical education can change inherited narratives about how cultural heritage is understood. While it is necessary to avoid glossing over the way difference motivates violations of cultural rights, a multi-perspective approach can replace hitherto-dominant national- or ethnic-centred views.<sup>145</sup> A TJ approach to curriculum revision 'can assist each of

136. Paul Basu, 'Confronting the Past? Negotiating a Heritage of Conflict in Sierra Leone' (2008) 13 *Journal of Material Culture* 233, 236.

137. Donny George, 'The Looting of the Iraq National Museum' in Peter Stone and Joanne Farchakh Bajjaly (eds), *The Destruction of Cultural Heritage in Iraq* (Boydell & Brewer 2008) 97, 105–106.

138. Daniel Bar-Tal, Aurel Harrison Diamond and Meytal Nasie, 'Political Socialization of Young Children in Intractable Conflicts: Conception and Evidence' (2017) 41 *International Journal of Behavioural Development* 415, 415.

139. Falk Pingel, 'Can Truth Be Negotiated? History Textbook Revision as a Means to Reconciliation' (2008) 617 *Annals of the American Academy of Political Science* 181, 184–185.

140. Elizabeth Cole and Karen Murphy, 'History Education Reform, Transitional Justice, and the Transformation of Identities' in Arthur (ed) (n 25) 337.

141. Elizabeth Jelin, 'Memory and Democracy: Toward a Transformative Relationship' in Paul Gready and Simon Robins (eds), *From Transitional to Transformative Transitional Justice* (Routledge 2019) 172, 184.

142. Cole and Murphy (n 140) 344.

143. *ibid* 342.

144. The South African and Guatemalan truth commissions recommended this. The Peru and Sierra Leone Truth commissions provided materials for use in schoolrooms. See Elizabeth Cole and Karen Murphy, 'History education reform, transitional justice, and the transformation of identities' (2009) accessed 2 July 2022.

145. Pingel (n 139) 182.

the two sides to begin to reconsider its own narrative of justice and injustice.<sup>146</sup> Even if this falls short of reconciliation, acknowledging the diversity of experience can reduce the affective attachment communities may have to taken-for-granted, exclusivist discourses of dominance or victimhood.<sup>147</sup>

History education, as the foremost carrier for citizenship education, can serve as a mutually intelligible 'bridging discourse' that encourages multiple interpretations of heritage and emphasise the plurality of a society over artificially unified identities.<sup>148</sup> Of course, progress beyond mere acknowledgment of the validity of the heritage is critically conditioned and potentially rendered redundant by factors beyond curriculum review. Education is most likely to ground a culture of tolerance in integrated institutions where divisive iconography is banned and ethnonational affiliations are downplayed.<sup>149</sup> Schools are not alone in the work of countering divisive narratives about heritage, of course: memory sites, memorials, museums, and the media help dispel the myth-making that led to cultural destruction and recover a shared sense of history. However, none can do so as authoritatively as a truth commission.

### 4.3 TRUTH COMMISSIONS

If the destruction of tangible cultural heritage amounts to 'killing memory',<sup>150</sup> it should come as no surprise that heritage scholars have begun to explore whether truth commissions might provide some measure of response.<sup>151</sup> As Jaramillo notes, there is something intuitively symbiotic about work in both areas: memory 'shapes, influences, creates and justifies heritage', while heritage 'organises, frames, and in extreme cases even disregards memory'.<sup>152</sup> The sheer fact of destruction illustrates how memories and narrative about heritage and place are plastic and can reinscribe divisions if left unaddressed. The Syrian example makes clear that destruction itself is typically subject to propaganda wars over responsibility.<sup>153</sup> Amnesia about heritage destruction may become State policy, as in the Turkish Republic of Northern Cyprus's insistence that nostalgia for homes lost in 1974 was implicitly disloyal.<sup>154</sup> The State's intent to retain sovereign jurisdiction over cultural policy, most notably through registering and listing protected heritage, risks simplifying and (re)distorting the historical record. Because 'both victory and victimhood have their advantages' in terms of the post-conflict narrative, the risk of essentialist accounts of heritage destruction is significant.<sup>155</sup>

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146. Cole and Murphy (n 140) 349.

147. Keith Barton and Alan McCully, 'Trying to "See Things Differently": Northern Ireland Students' Struggle to Understand Alternative Historical Perspectives' (2012) 40 *Theory & Research in Social Education* 371, 400.

148. Cole and Murphy (n 140) 351,348; drawing on Alexander Kam, 'Depolarizing the Past: The Role of Historical Commissions in Conflict Mediation and Reconciliation' (2006) 60 *Journal of International Affairs* 31, 31.

149. See for example Briony Jones, 'Exploring the Politics of Reconciliation through Education Reform: The Case of Brčko District, Bosnia and Herzegovina' (2012) 6 *International Journal of Transitional Justice* 126.

150. Andrés Riedlmayer, 'Killing Memory: The Targeting of Libraries and Archives in Bosnia-Herzegovina' (1994) 61 *MELA Notes* 1, 1 (Title).

151. Lostal and Cunliffe (n 22) 252–253.

152. Jaramillo (n 20) 203.

153. Lostal and Cunliffe (n 22) 252.

154. Sharon Macdonald, *Memorylands: Heritage and Identity in Europe Today* (Routledge, 2013) 94 (as cited in Jaramillo (n 20) 204).

155. Viejo-Rose and Sørensen (n 113) 286.

One of the guiding principles of truth commissions is that identities forged from false or distorted memories can pave the way for transgression in future.<sup>156</sup> The proven, if essentially unmeasurable, ability of truth commissions to reshape public discourse and perceptions makes them a compelling response to cultural destruction.<sup>157</sup> Space precludes a detailed examination of truth commissions, but their essential features should be familiar. They generally share five common features outlined by Hayner. They:

1. focus on past events;
2. investigate a pattern of events that took place over a designated timespan;
3. proactively gather information on the experiences of affected citizens;
4. are temporary measures culminating in a final report; and
5. are officially authorised/empowered by the State under review.<sup>158</sup>

Truth commissions generally command some degree of public acceptance on account of their relative impartiality. The aspiration is generally to produce a report that yields a legitimate foundational narrative for a more unified and reconciled State. Public hearings, compulsion of documents/testimony, and incentive-based amnesties are most conducive to truth commissions that can meaningfully counter myths, denialism, misunderstandings or polarisation.

As noted earlier, cultural crimes have generally been ignored in TJ and truth commissions are no exception. The Guatemalan truth commission is a rare example of one that gave due regard to the government's attempt 'to destroy the [intangible] cultural values that assured the cohesion and collective action in Mayan communities.'<sup>159</sup> In so doing, it solidified Mayan cultural identity after a conflict characterised by invisibility and repression.<sup>160</sup> While a truth commission dedicated entirely to breaches of cultural rights is unlikely, there is no reason heritage destruction cannot be added to existing remits. Given its public nature, secrecy is rarely an issue in cultural destruction, meaning exploration is unlikely to prove costly or fruitless. Truth commissions have historically proven highly adaptable to particularly persistent violations within a given transitional ecology. Truth commissions in South Africa and Sierra Leone, for example, employed specialised hearings to draw attention to issues like structural injustice and economic crimes that were otherwise marginalised in liberal-legalist approaches to truth. These were then captured in the final report.<sup>161</sup>

The scope of the inquiry will likely be dictated by the nature of the commission. The understanding of victimisation defines its limits. Early truth commissions adopted a fairly circumscribed approach to human rights violations, focusing primarily on civil and political rights to foster liberal, rule of law-based commitments. Over time they have expanded to acknowledge the

156. Antjie Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa* (Crown 2007) 80.

157. Arthur (n 25) 11.

158. Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (Routledge 2001) 14.

159. Comisión para el Esclarecimiento Histórico, *Guatemala: Memoria del silencio, vols. 1–12* (United Nations, 1999) 23.

160. Madeleine Fullard and Nicky Rousseau, 'Truth Telling, Identities, and Power in South Africa and Guatemala' in Arthur (ed) (n 25) 82.

161. It is worth pointing out that Peter Ysabee recommends a specifically *international* Cultural Reconciliation Commission that could investigate the damage caused to cultural goods and recommends reparations (Peter Ysabee, 'A Right to Reparation for Damage to Cultural Goods and Cultural Heritage in Post-Conflict Situations' (2017) 17 *Journal of Art Crime* 29, 39). The focus in this article is specifically on domestic approaches.

indivisibility of rights, albeit haltingly, to explore the wider economic context like economic crimes and structural inequalities to foreground more inclusive citizenship. Destruction of heritage as a violation of cultural rights could fit within this expansion. Still, there is a division between truth commissions that adopt a reconciliatory paradigm that develop consensual views of the past and those with more transformational aspirations to change the social conditions that underlie identity-based violations.<sup>162</sup> At its narrowest, a truth commission could use specialised hearings or a dedicated part of the report to catalogue different types of cultural destruction and explore the reasons it occurred. As such, it would look backwards to end impunity and forwards to announce the State is no longer tolerant of such abuses.<sup>163</sup> Acknowledging this harm recognises the dignity of heritage, its relevance to the community, and its place within the State's cultural diversity.

More ambitiously, a truth commission could look at broader historical patterns of cultural domination or animus. As such, it could seek to debunk the myth-symbol complexes underpinning the 'everyday primordialism' which leads to cultural destruction.<sup>164</sup> Of course, as Basu argues, puncturing myth-symbol complexes should not lead to inaccurate countermyths of peaceful co-existence.<sup>165</sup> A more inclusive collective memory can provide a common framework for understanding the relevance of tangible cultural heritage for exercising individual and collective rights to cultural participation. There is no guarantee a truth commission that reports on and condemns cultural destruction can move from this form of social-dialogic truth to actual reconciliation in the sense of establishing healthy relations between communities going forward. However, it can affirm a parity of esteem that was previously denied, redistributing power discursively on the symbolic level by rectifying a prior hierarchy of value placed on different artefacts, sites, and buildings.<sup>166</sup>

Heritage professionals have long argued that 'a deeper understanding of the motives behind attacks on cultural property can facilitate more precise policies for the management of cultural property.'<sup>167</sup> The final significant advantage offered by truth commissions, therefore, is their ability to recommend institutional reforms on matters within their mandate in their reports to prevent recurrence of past violations. A prime example is the Peruvian truth commission, which recommended significant reforms to democratic participation, the police and military as well as the creation of institutions to address structural discrimination against indigenous groups. Recommendations like the revision of exclusivist national heritage laws, the addition of new sites to protected heritage lists to reflect different identities, capacity-building for tangible heritage management as a rights-based practice, educational curriculum reform, and ratification of relevant UNESCO conventions<sup>168</sup> help ensure preservation of, and access to, tangible cultural heritage going forward.

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162. Fullard and Rousseau (n 160) 55.

163. Cheryl Lawther, "'The Cast of the Past': Truth Commissions and the Making and Marginalization of Identity' (2018) 17 *Ethnopolitics* 113, 114.

164. Arthur (n 85) 290.

165. Basu (n 136) 233.

166. Drawing on, and adapting, an argument in Fullard and Rousseau (n 160) 56,83.

167. Johan Brosché and others, 'Heritage Under Attack: Motives for Targeting Cultural Property During Armed Conflict' (2017) 23 *International Journal of Heritage Studies* 248, 256.

168. See above (n 5).

## 5. CONCLUSION

This article has explored how the deliberate destruction of tangible cultural heritage in the pursuit of terror or forced homogenisation makes diversity a victim of contemporary conflict. The damage is both material and symbolic. After conflict, the boundaries of inclusion and exclusion must adapt and the cultural politics of identity must be renegotiated. Heritage, as a core manifestation of a people's dignity, is a key means by which identity is mediated, provided there is some measure of redress. TJ has a role to play in countering harmful foundational narratives of difference and recognising the legitimacy of cultural variance. Policymakers and scholars must therefore acknowledge the importance of materiality and meaningfully affirm the valence of cultural rights to pay due regard to the indivisibility and interdependence of human rights.

While the expansion of TJ to socio-economic rights and structural inequalities is widely perceived to involve a paradigm shift,<sup>169</sup> the accent on the symbolic and particular means existing mechanisms are applicable without significant revision. Heritage reconstruction can serve as a means of reparation, but even where reparation is not the motivation TJ values can guide contentious discussion. History education and curriculum revision can serve as a form of TJ that counter the mythmaking of those who aggressed or stood aside. Truth commissions can incorporate destruction of cultural heritage, acknowledging damage but elaborating narratives and policies that can reconfigure institutional treatment of heritage and affirm a new baseline for cultural engagement going forward. Identity is contingent, evolving, and mutable. In responding to destruction of cultural heritage, TJ can prove itself contingent, evolving, and mutable as well.

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### ORCID iDs

Sinéad Coakley  <https://orcid.org/0000-0002-6402-7830>

Pádraig McAuliffe  <https://orcid.org/0000-0002-7712-5472>

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169. An argument outlined, but dismissed, in Evelyn Schmid and Aoife Nolan, “‘Do no Harm’? Exploring the Scope of Economic and Social Rights in Transitional Justice” (2014) 8 *International Journal of Transitional Justice* 362, 379.