# Part 3: Cultural Heritage and Populations at Risk

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A point of departure for this research project was the compelling need to stop, and hopefully prevent, the destruction of cultural heritage and mass atrocity crimes, which UN member states agreed at the 2005 World Summit under the norm of the responsibility to protect, or R2P (the crimes defined there as genocide, war crimes, crimes against humanity, and ethnic cleansing). Part 3 investigates in-depth the moral repulsion and preoccupation with human suffering that is invariably intertwined with attacks on cultural heritage. Hence, the five chapters in “Populations at Risk” review the many pressing normative, humanitarian, and ethical requirements to halt and prevent mass atrocities.

Chapter 16 is an overview of recent normative efforts in “Cultural Cleansing and Mass Atrocities.” Simon Adams, the president and CEO of the Center for Victims of Torture, and former executive director of the Global Centre for the Responsibility to Protect, has two distinct yet intertwined themes. He begins with “cultural cleansing,” the phrase coined by Irina Bokova, the author of the Foreword to this book and the former director-general of the UN Educational, Scientific and Cultural Organization (UNESCO). The term refers to attacks on cultural heritage perpetrated by state and nonstate actors alike, including efforts to erase the history of the people or peoples whose heritage is being damaged or destroyed together with their physical annihilation. While some challenge the link between attacks on cultural heritage and mass atrocities, Adams points to a “disturbing convergence between sustained attacks on cultural heritage and the attempted extermination of entire peoples.” In short, there exists a theoretical possibility of separating the protection of people and their cultural heritage, but almost invariably wherever and whenever vulnerable people are the subject of atrocities, their cultural heritage is under attack as well. Using the onslaught against the Hazara population in Afghanistan by state and nonstate forces alike, of many minorities in Iraq by the Islamic State of Iraq and Syria (ISIS), and of the Uyghurs by China, Adams makes a persuasive case that there is an international responsibility to protect vulnerable populations from those seeking to destroy them and their cultural heritage. Neither “cultural cleansing” nor “ethnic cleansing” has an international legal definition, but both capture atrocities together with genocide, war crimes, and crimes against humanity. His second theme is the responsibility to protect, the emerging norm that seeks to guide international responses to prevent mass atrocities, react to them, or rebuild after failures to do either of those. These same three terms characterize approaches by members of the heritage community—archaeologists, museum curators and directors, and anthropologists—which helps explain why R2P was the point of departure for this research endeavor. Adams echoes Bokova in closing with “an impassioned plea for the protection of civilians to remain at the center of cultural heritage protection.”

Part 3 continues with an exploration of the ethical underpinnings of the concerns for people and their cultural heritage. Chapter 17, “Choosing between Human Life and Cultural Heritage in War,” contains reflections by Hugo Slim, senior research fellow at the University of Oxford’s Institute of Ethics, Law and Armed Conflict in the Blavatnik School of Government; his argument also draws on his years as the head of policy and humanitarian diplomacy at the headquarters of the International Committee of the Red Cross in Geneva. This chapter reinforces one of the central propositions running throughout the book: how difficult it is, analytically or practically, to disentangle the twin imperatives to safeguard human life and cultural heritage, or the inextricable relationship between personhood and property—or in Slim’s framing, “humanity is biology and biography.” He notes that there are two ways to hurt individuals, “by attacking them and their family, or by attacking what they love in the community to which they belong.” He continues by asking why cultural heritage matters at all, and why trade-offs are viewed as so painful. While agreeing that culture is not merely a means for humans to flourish but also an essential value in *being* human, Slim nonetheless argues that, if “hard battlefield choices” are unavoidable, the lives of civilians and friendly combatants trump concerns about cultural heritage. He concludes with suggestions for armed forces, humanitarians, and vulnerable communities about how best to mitigate cultural losses. Like all contributors to this volume, he does not deny that the destruction of cultural heritage is ethically and legally wrong. Yet, Slim holds that under certain circumstances a stark choice may be unavoidable; in that case, do lives or cultural heritage take precedence? His bottom line is that human life must be the priority in such circumstances; his judgment reflects the logic that living beings maintain the potential for cultural reconstruction and renewal; dead ones do not. Currently, some eighty million refugees and internally displaced persons are forcibly displaced and suffer not only physically but also from the loss of access to cultural sites left behind. However, Slim concludes that “it is right that they have saved themselves so they can create new things, remember what was lost and continue to be human.”

Chapter 18 continues to explore this uncomfortable reality in “Saving Stones and Saving Lives: A Humanitarian Perspective on Protecting Cultural Heritage in War.” Paul Wise—professor in child health and society as well as of pediatrics and health policy at Stanford University—applies the humanitarian’s passion for alleviating unnecessary human pain and the cosmopolitan’s appreciation for the inherent value of cultural heritage. As both suffer during armed conflict, the connection between them has in recent decades been used to justify robust protection not only of human beings but also of cultural heritage. In his words, “the relationship between the destruction of cultural heritage and the destruction of people is as complex as is the meaning of culture and the tragedy of violent death.” Wise implores those working within the heritage-humanitarian relationship to move beyond anecdotes and determine empirically the precise impact of the six different mechanisms summarized in his alliterative framework: prelude, provocation, parallelism, protraction, participation, and propaganda.

While the intimate connections between lives and stones seem intuitively correct, he assesses the admittedly inadequate empirical evidence supporting the links. He admits that “the humanitarian justifications for protecting cultural heritage in war are real but complicated.” While “the destruction of cultural heritage warrants condemnation regardless of its ultimate linkage to violent attacks on people,” he challenges members of the humanitarian and heritage communities to dig deeper. He urges them to pursue in-depth research that goes beyond the narrow disciplines espoused by those who study heritage and those who study humanitarianism. Why? If protecting cultural heritage reduces suffering and death or the duration of war, such protection is not merely a cultural desirability but also a humanitarian imperative. Moreover, the case is all the stronger because heritage destruction also entails psychological costs that also negatively affect health and thus add weight to the humanitarian’s appreciation for the extrinsic value of cultural heritage.

Wise points out that even the most basic question—about the precise percentage of heritage destruction (before, during, and after wars) that is associated with mass atrocities—has received scant attention in research by medical personnel, social scientists, and humanists. Debate revolves more around committed conjectures than empirical realities. Wise does not question the value of protecting heritage or the links between such protection and saving human lives, but he demands more than merely asserting that heritage should be protected on humanitarian grounds. It will be necessary to move beyond “a traditional reliance on heritage expertise alone” and toward “new forms of transdisciplinary collaboration involving security, political, health, and humanitarian disciplines.” Both strategies and tactics could and should change with more granular data and analysis, which could “lay a more coherent foundation for engaging the heritage protection and humanitarian communities in a unified public advocacy dedicated to saving both stones and lives.”

Chapter 19 reflects the academic and policy preoccupations of Jennifer Welsh, research chair in global governance and security as well as director of McGill University’s Centre for Peace and Security Studies, and a former special adviser of the UN Secretary-General on the responsibility to protect. Well versed in the scholarly and practical consequences of the debates about this evolving norm, Welsh seeks a solution to the problem that international law—no matter how adequate or inadequate its provisions—still mainly applies to states. Yet in recent decades, many atrocities as well as the destruction of substantial cultural heritage have resulted from attacks by nonstate actors. Welsh’s essay, “Engaging Nonstate Armed Groups in the Protection of Cultural Heritage,” explores the admittedly limited means to persuade nonstate armed groups (NSAGs) of the necessity to take seriously international norms and respect the provisions of international humanitarian and human rights law.

However, engagement with NSAGs is controversial and often blocked within intergovernmental deliberations because of “the long-standing reluctance of states to undertake actions or commitments that they believe might legitimize such entities, or challenge the authority of existing governments.” She puts forward a five-part typology that distinguishes types of NSAGs by their differences in political objectives, organizational types, community-embeddedness, ideology, and the nature of their internal political and military wings. Welsh argues that identifying variations in criminal behavior toward cultural heritage is a prerequisite for tailoring policy measures to discourage destructive and encourage constructive behavior. She probes the “why” and “how” of attacks on cultural heritage that are deliberate and public.

Deterring what often constitutes theater to be consumed by susceptible audiences demands different approaches for countering destruction from those designed to prevent collateral damage or poorly informed and executed military actions. One size certainly does not fit all because there are two categories of NSAGs—those that deliberately destroy cultural heritage and those that respect it. So, incentives could work to persuade the latter to sign pledges to respect international law and, perhaps more importantly, norms (work pioneered by Geneva Call). While NSAGs have not participated in the elaboration of the formal rules governing the protection of cultural heritage, “some of them do acknowledge the importance of the values underpinning the legal regime.” Welsh thus aims to identify processes that can engender restraint—that is, to discover the sources of authority, belief, and influence—within NSAGs that can be used to steer them toward respecting cultural heritage rather than intentionally flouting international obligations.

The final topic of Part 3 is Chapter 20, “After the Dust Settles: Transitional Justice and Identity in the Aftermath of Cultural Destruction.” The authors are Philippe Sands, professor of law at University College London, and Ashrutha Rai, a doctoral candidate at the University of Cambridge and previously a judicial fellow at the International Court of Justice in The Hague. Beginning in the 1990s and following the negotiated end of many armed conflicts and the start of substantially new government regimes, a series of intense experiments began in a variety of contexts to ensure some nonjudicial accountability and redress for victims of abuse and atrocities. Sands and Rai peer obliquely through the prism of international law to explore the potential of transitional justice—pioneered to address atrocities in the aftermath of wars or significant repression of basic human rights—to examine its applicability for safeguarding cultural heritage. The authors analyze the details of this conflict-management device in cases as varied as the former Yugoslavia, Sierra Leone, East Timor, and Rwanda. Seeing little consistency in theory or practice, they seek to identify the legitimate but not strictly judicial responses to massive violations of rights that also could be relevant for protecting cultural heritage. Transitional justice does not emphasize the letter of international law but rather more immediate and practical solutions for communities that have suffered both heritage loss and mass atrocities. It seeks to circumscribe “fractious questions of ownership in favor of practical solutions for embedded communities.”

The delicate challenge for Sands and Rai is to avoid the easy path of ignoring cultural cleansing while not exacerbating the fragile equilibrium of a country in transition. Thus, conviction and punishment are not the only paths to a measure of justice. “An attempt to move past traumatic episodes requires inquiry into the nature of cultural ownership,” which the authors admit is a fraught undertaking. While international cultural heritage law emphasizes the decontextualized protection of cultural sites and property, Sands and Rai argue that framing the dilemma accurately has two requirements: understanding the numerous fractious claims to “ownership” that range from individuals and distinct groups (local, regional, national) to all of humankind; and finessing the internationalist–nationalist divide for such claims. International heritage law does not distinguish varied affective experiences and senses of loss, yet any successful reconstruction following war, violence, and mass atrocities molds and is molded by the identities of those with simultaneous claims to ownership. As the authors point out, “the distinct aims of both transitional justice and international cultural heritage law are ultimately oriented toward and best achieved through a peace that is sustainable and effective over the long term.” Sustainable peace “calls for an approach to cultural heritage that is responsive to the simultaneous narratives, multiple identities, and unpredictable associations that link people with culture.”