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Cultural Heritage, Genocide, and Normative Agency

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ABSTRACT *In this article, I explore the possibility of treating cultural destruction and the destruction of cultural heritage as a genocidal act. My argument proceeds in two stages. I first suggest that we ought to view cultural destruction as a necessary by-product of genocide and a member of a set of jointly sufficient conditions for genocide. However, to securely establish that cultural destruction and the destruction of cultural heritage ought to be viewed as genocidal acts, we need to additionally show why loss of culture and heritage are significant harms, comparable to other instances of genocide. In light of this, I then propose an account of the harms of cultural destruction that grounds these harms in loss of normative agency and show how destruction of cultural heritage contributes to this. In particular, I argue that cultural heritage can be viewed both as a condition for normative agency and as itself an expression of normative agency.*

A common justification for safeguarding cultural heritage in times of conflict is that what is at stake in the destruction of cultural heritage is not mere loss of historical artefacts but—in some sense—loss of a people themselves.[1] When cultural heritage is destroyed, severe harm has been done to those closely associated with the heritage, and such destruction ought to be punished accordingly. This is often taken to justify treating cultural-heritage destruction as a violation of both human rights and international criminal law, as a crime against humanity and a war crime.[2]

Recent discussions have gone further, sometimes treating cultural-heritage destruction as a genocidal act—and so as a further violation of international criminal law.[3] The observation that cultural destruction is closely connected to destruction of groups is not a new one: the last fifty years have seen a proliferation of calls to treat seriously the detrimental effects that intentional cultural destruction has on the survival of various cultural groups. Concepts such as ‘ethnocide’ and even ‘cultural genocide’ have become a natural part of the vocabulary of scholars, UN bodies, and advocacy groups. However, oftentimes they are meant to designate a process closely related to, but ultimately distinct from, genocide itself.[4] Cultural assimilation, loss of cultural identity, and the like are considered potentially constitutive of *cultural* genocide, as opposed to genocide itself. The addition of ‘genocide’ could be interpreted as a rhetorical move that emphasizes the severity of the harms of cultural destruction and loss.

In contrast, the recent inquiries into the relationship between cultural destruction and genocide that are my focus here treat cultural destruction not as a separate occurrence, but rather as an integral part of genocide itself. Such an understanding of genocide is controversial: international law is famously resistant to notions of genocide that denote more than the biological or physical destruction of groups. Additionally, it is

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also unclear to what extent genocide and cultural destruction are conceptually coextensive. What would justify such a connection and to what degree is one properly part of the other? If cultural destruction is indeed a genocidal act, is it a necessary condition for genocide, a sufficient condition, or both? In light of these questions, my aim in this article is to explore the conceptual space for treating cultural-heritage destruction as a genocidal act, by both interrogating the concept of genocide itself and by inquiring into the explicit moral harms involved in cultural-heritage destruction qua genocide. Such harms can be understood in at least two ways: as harms done to groups themselves and as harms done to individuals, albeit as members of said groups. My focus in this article is going to be on harms done to individuals, as members of the targeted groups. I leave the complicated question of ways in which harm resulting from cultural-heritage destruction can be inflicted on groups themselves and how such harms are understood for future research.

In the first part of the article, I argue that cultural destruction indeed can be seen as part of the concept of genocide. More precisely, I argue that it can be viewed as a necessary condition in a weak sense—i.e. every genocidal destruction of a group *results* in loss of culture even if that culture itself is not a target of the genocidal acts. Additionally, it can be viewed as a member of a set of jointly sufficient conditions for genocide to occur. In the second part of the article, I propose an account of the harms of cultural destruction that grounds these harms in the individual loss of normative agency and explains how the destruction of cultural heritage contributes to this.

Genocide and Cultural Destruction

There is widespread consensus that the definitive feature of genocide is its group orientation. In other words, it is a crime involving an intention to destroy (in whole or in part) an ethnic, national, racial, or religious group. However, what form such destruction may take, and, in turn, what techniques qualify as genocidal, is a matter of controversy, both in academic inquiries and in legal practice.[5] The question whether cultural destruction can be seen as a genocidal act is a representative case of such an inquiry. There is famously no explicit mention of cultural destruction in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (henceforth, Genocide Convention), the central document outlining the content of the concept of genocide and determining its prosecution.[6] As a result, cultural destruction has never been prosecuted as a genocidal act in the international context.[7]

Despite this, the question whether cultural destruction can be legitimately considered as a genocidal act has been particularly pressing ever since the beginning of the ratification procedures of the Genocide Convention.[8] In what follows, I will argue that this is the case for two reasons, which I will discuss in turn: (a) the arbitrariness of the exclusion of cultural destruction from the Genocide Convention and (b) the overt conceptual connections between genocide and cultural destruction.

Arbitrariness

Historically, the notion of genocide was intended to explicitly encompass cultural destruction. The term was famously coined by Raphael Lemkin, who was one of the

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chief initiators of the Genocide Convention and one of the independent experts mandated by the then recently formed United Nations to produce a Secretariat draft of the Genocide Convention.[9] In his seminal *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, and Proposals for Redress* (1944), where the term 'genocide' itself is coined, Lemkin introduces genocide as a multidimensional crime of a systematic nature, the purpose of which is to destroy a national, racial, or religious group in whole or in part. Cultural destruction, according to Lemkin, is a critical component of the implementation of genocide and consists of the destruction of both tangible and intangible aspects of the culture of the group.[10]

But while it may have been the case that a cultural dimension was integral to the initial conceptualisations of the crime of genocide, its inclusion in the Genocide Convention met strong resistance from the signatory states. Some delegates worried that cultural destruction pales in comparison to the killing of people, and due to this, there is a principled distinction to be made between the two, and the latter should not, therefore, be considered as part of the former.[11] For instance, the Denmark delegation at the Sixth Committee of the General Assembly during the debates on the inclusion of cultural dimension to the Genocide Convention remarked: 'It would show a lack of logic and of a sense of proportion to include in the same convention both mass murders in gas chambers and the closing of libraries.'[12]

However, political considerations may have been the most significant contributors to the omission of the provision on cultural destruction in the Convention. As various scholars have noted, what ended up making its way to the Genocide Convention was largely shaped by the framers' not wanting to open themselves up to charges of genocide.[13] As Luck argues, a significant issue here was decolonization, with both colonial powers, such as the United Kingdom, Netherlands, Denmark, Belgium, France, and settler countries—United States, Sweden, Brazil, New Zealand, Australia—that have displaced indigenous peoples, opposing the inclusion of cultural destruction as a genocidal act in the Convention.[14]

The vote on whether to include a cultural provision in the Genocide Convention was twenty-five countries against, sixteen for, and four abstaining. As Luck notes, the vote was decisive, but hardly overwhelming. So many countries were absent that the Egyptian delegation tried to have the vote postponed.[15] Therefore, not only did the negotiations over the contents of the Convention seem to be fraught with political considerations, the vote did not seem to reflect an overwhelming consensus to begin with.

What this indicates is that the exclusion of an explicit cultural provision in the Genocide Convention was to a significant extent motivated by pragmatic concerns of signatory states, rather than deep conceptual tensions that would signify that cultural destruction is inconsistent with other aspects of genocide. This is not to say that there are no concerns about conceptually linking genocide and cultural destruction. I think we should take seriously worries such as those raised by members of the Denmark delegation during the negotiation period—that is, that acts that are commonly associated with genocide, such as mass killing, seem to be much worse than cultural destruction, such as the disappearance of local customs or destruction of architectural artefacts. Among other things, the harms of the former type, at least when it comes to our initial assessments, appear to far outweigh the harms of the latter. Therefore, it seems wrong to put acts such as mass killing and cultural destruction under one concept. But, as I will argue below, this worry does not point to an inherent inconsistency in treating

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cultural destruction as a genocidal act, but rather rests on a mistaken assessment of the value of culture and cultural heritage to individuals and the communities that they make up.

Conceptual Connection Between Cultural Destruction and Destruction of a Social Group

Since the establishment of the Genocide Convention, the link between cultural destruction and genocide has become much more robust, especially in scholarly work on the concept—so much so that now it is not uncommon to note that 'cultural genocide is present as an intrinsic characteristic of every process of genocide, which can be empirically observed'.[16] This is not only an empirical observation: there is a very close conceptual connection between cultural destruction and group destruction, captured by genocide.

Such a connection is well established in Claudia Card's work on the concept of genocide and the ethical distinctness of its harms.[17] According to Card, given that genocide is a crime that targets the group and not a mere set of individuals, the analysis of its harms ought to be grounded in (at least among other things) what it does to the group itself, with individual harms being derived from this. Genocide destroys the group by destroying what unifies individuals into one group, that is, by destroying their social identity. Social identity is destroyed by destroying features that constitute it—for example, shared language, cultural customs, relationships, and cultural artefacts. All such features facilitating a social identity make up social vitality.

According to Card, characteristic of genocide is a loss of the group's social vitality, which 'exists through relationships, contemporary and intergenerational, that create [...] [a cultural] identity that gives meaning to life'.[18] Culture plays a pivotal role here, since it serves as the background for social vitality by providing a set of norms that govern it. Therefore, the destruction of culture and cultural identity is tantamount to the destruction of social vitality. And, given that what is characteristic of genocide, according to Card, is that it results in social death, cultural destruction is central to the concept of genocide.[19]

However, not all social death is tantamount to genocide; some other factors need to be present, and specifying them is a pressing matter. This is especially urgent given the fact that some cultural practices and, by extension, the social vitalities that they facilitate, can be deeply harmful. Consider a hypothetical cultural group crucial to the social vitality of which are a variety of cultural practices involving enslavement and other similar acts dehumanization. If cultural destruction, coupled with the intention to destroy the group, were enough for an act to be considered genocide, then such cases would seem to amount to genocide. This is counterintuitive. If someone engaged in a just war with said group with the intention to root out such cultural practices, which resulted in mass death of the members of this group, all other things being equal, we would not consider this to be morally on a par with paradigmatic instances of genocide.[20]

This shows that, at the very least, social death (and through it, cultural destruction) is not in itself a sufficient condition for genocide. Other things need to be present for genocide to have occurred. One such criterion is that the targeted group itself not be an evil.[21] This is arguably also implicit in the Genocide Convention. According to Card, groups are evil if (a) the group could not exist without the evil practices,[22] and

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(b) the group is not capable of moral improvement and self-correction.[23] Following (a), the dissolution of the hypothetical slavers' society mentioned above would not be considered genocide, given that in our hypothetical example deeply vicious dehumanizing practices are essential to the group's identity and social vitality. However, if the group were able to morally improve its ways by changing its social vitality by eradicating the particular evil cultural practices in question, then, following Card's reasoning, destroying said group, all other things being equal, would no longer qualify as nongenocidal.

Cultural Destruction as a Condition for Genocide

Traditionally, any of the acts mentioned in the Genocide Convention, such as killing members of the group or causing serious mental or bodily harm, are seen as sufficient for genocide, provided a genocidal intent can also be proven. Given the close conceptual connections between cultural destruction and genocide outlined above, how should we view the status of cultural destruction in the context of genocide? As indicated above, cultural destruction (or loss of social vitality) in itself is not sufficient for genocide to occur. An alternative is to argue that while cultural destruction is not sufficient by itself, it is necessary regardless. This view may be appealing to those who are interested in establishing that not only are cultural destruction and genocide closely linked, cultural destruction is what is characteristic of genocide. This seems to be Card's view, which is reflected in her statement that not all social death is genocide, but all genocide is social death.[24] If this indeed can be shown to be the case, this may then provide a conceptual foundation for prosecuting cultural destruction as a genocidal act.

There are at least two ways to read the claim that cultural destruction is a necessary condition for genocide.[25] A weaker way to understand this claim would be to treat cultural destruction as a necessary *by-product* of genocidal killing. Every time a cultural group is destroyed, there necessarily is loss of culture. But if this is how we should interpret cultural destruction being necessary for genocide, it is not clear in what sense such loss is truly characteristic of the evils of genocide, as Card presents it.[26] The trouble is that cultural loss, understood in this sense, to one degree or another, is a condition for any kind of killing of those who produce and participate in culture, i.e. human beings.[27] Which is just to say that it is a necessary condition for any kind of killing. So, saying that cultural loss is characteristic of genocide does not seem to be any more informative than saying that killing is characteristic of genocide. And given that this is the case, it is not clear how exactly this would justify treating explicit targeting of culture as a genocidal act.

An alternative way of interpreting this claim is to take it to be expressing something quite robust: cultural destruction is a necessary *precondition* for genocide in the sense that cultural destruction is part of what makes an act genocidal. If this is the case, then establishing both that cultural destruction is a characteristic feature of genocide and that it should be treated as a genocidal act would be an easier feat. However, establishing the stronger reading is much more difficult, at least if we want to work within the confines of the Genocide Convention. I think the uncertainty here is grounded in it being unclear whether all of the groups that are considered to be potential targets of

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genocide—national, ethnic, racial, or religious—are meant to also necessarily be cultural. National, ethnic, and religious groups seem to have an explicit cultural dimension, this way making the destruction of their social vitality a mark of genocide. Indeed, it does seem difficult to see how one could destroy such groups *qua* groups without targeting the variety of cultural practices that define them as those groups in the first place. But it is less clear to what extent that is the case with racial groups that are often times much broader than just particular cultural communities, and seemingly less unified by concrete cultural practices, especially if we take the definition of race established in the jurisprudence of the *ad hoc* International Criminal Tribunals, where we can see first explicit applications of the Genocide Convention.

There are two ways of defining the target group of genocide that have been employed in tribunals such as the International Criminal Tribunal for Rwanda (henceforth, ICTR), an objective and a subjective one.[28] According to the objective definition of membership criteria, such criteria are to be identified by verifiable features. As Szpak notes, in this approach the group is regarded as 'a social fact, a stable and permanent reality[;] [m]embers belong to the group automatically and irreversibly on the basis of their birth within the group'.[29] Subjective criteria are criteria determined by either the perpetrator or those who identify with the group: 'the group exists to the extent that its members perceive themselves as belonging to that group [...], or are perceived as such by the perpetrators'.[30]

When it comes to racial groups, the objective criteria are tricky to pinpoint, not only because it is not clear how should we go about establishing such criteria, but because in trying to determine them at all, we run the risk of assuming that there is something biological and essential to race. During ICTR, the initial cases seem to primarily have taken the objective approach and then gradually moved to rely more explicitly on the subjective one.[31] Consider the definition of race in *Prosecutor v Akayesu,* where some such objective criteria are implicit. Here race is defined as something that explicitly transcends culture: 'the definition of racial group is based on the hereditary physical traits often identified with geographical region, irrespective of linguistic, cultural, national or religious factors'.[32] Arguably, this definition is both inaccurate and quite problematic in that, among other things, it harmfully biologizes the concept and does not appropriately establish it as being socially constructed. Regrettably, it does seem to mirror the variety of essentialist misconceptions about race in the general public and, somewhat ironically, likely would be something that a perpetrator intent on destroying a racial group would also harbour.[33] This is not to say that we cannot also note some discomfort in applying purely objective criteria in the jurisprudence of ICTR.[34] Perhaps in light of this, later cases have explicitly employed subjective criteria in establishing group membership. Notably in the *Bagilishema* judgment, the ICTR fully embraced subjective criteria, arguing that 'if a victim is perceived by the perpetrator as belonging to a protected group, the victim could be considered [...] as a member of the protected group, for the purposes of genocide'.[35]

Given such ways of identifying racial groups *qua* targets of genocide, consider the following case. Assume that the perpetrators are targeting a racial group and picking out members of the group based on a mistaken understanding of race that sees physical characteristics such as skin colour, certain biological features, and alike, to be essential criteria for the targeted racial group membership. They then target this racial group based on these characteristics alone. If we follow the subjective definition of

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group membership outlined above, where the victim being perceived by the perpetrator as belonging to a protected group could be enough to be considered an actual member of such a group, this does seem to fairly uncontroversially constitute an instance of genocide. But it is difficult to see why in this case cultural destruction would be necessary for such an instance of genocide, given that there might be no one overarching culture which we could attribute to a collective so diverse as a racial group.[36] Not only might cultural devastation not play an explanatory role here, it might be harmful to insist that it does to begin with. Such a strategy would imply that we can identify one overarching set of cultural features under which the group could be placed, which might lead to harmful instances of essentialisation and stereotyping.

Nothing that I have said here is meant to imply that cultural destruction (qua social death) may not be an important component of some genocidal targeting of racial groups, but rather to suggest that it need not be a necessary condition, understood in the stronger sense discussed above. Where exactly does this leave us? I think it is fairly uncontroversial that cultural destruction is a necessary condition for genocide in the weaker sense. Cultural destruction follows trivially from the destruction of its source, i.e. the human beings who create and maintain said cultures by participating in them. But as I have argued above, this understanding of 'necessary' might not be enough to ground treating cultural destruction as a genocidal act.

In light of this, I suggest that we treat cultural destruction as a member of a set of jointly sufficient conditions for genocide, along with conditions such as the presence of the perpetrator's intention to destroy a group in whole or in part, that the group that is targeted is not itself an evil, etc.[37] According to this picture, cultural destruction *can* be what makes an act genocidal—indeed, Card's insightful analysis of social death in the context of genocide provides a strong case for it doing so quite often—but it need not do so as a matter of strict necessity. That is, destruction of groups protected by the Genocide Convention that does not explicitly target culture, all other things being equal, ought not be considered any less genocidal. This particular treatment of cultural destruction's relationship to genocide also allows us to see in what sense it could be treated as a genocidal act. Indeed, making it a member of a set of jointly sufficient conditions for genocide would put cultural destruction in a similar position as other acts that can constitute genocide, as established in the Genocide Convention. Neither killing members of the group, causing serious bodily or mental harm to members of the group, nor any other acts mentioned there are seen as individually necessary for genocide to have happened, but they are rather treated as part of the set of jointly sufficient conditions (where at least one other sufficient condition is an intention to destroy a group in large or in part).

The Harms of Cultural Destruction: Normative Agency

So far, I have explored in what sense cultural destruction and genocide are conceptually intertwined. While cultural destruction might not be a necessary precondition for genocide to occur, *per se*, it indeed is a necessary by-product of genocide. Additionally, as I have argued above, it can be viewed as a sufficient condition for genocide, albeit only jointly with others. But even so, we may still have reason to resist including cultural destruction in the list of acts comprising genocide. In particular, many have

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expressed the worry that genocide ought to encompass only the worst atrocities that can possibly be committed against individuals and the groups that they make up; hence, the designation ought to be reserved for acts such as biological and physical destruction.[38] This is an alternative formulation of the worry of what was expressed by the Denmark delegation presented in the negotiations of the content of the Genocide Convention. Acts such as the extermination of people in gas chambers cannot be equated with loss of cultural artefacts.[39] In other words, cultural destruction simply is not comparable, in its harms, to harms such as physical loss of life. One may indeed worry that placing these in the same category is not only wrong but trivialises atrocities such as physical extermination of people.[40]

There is a straightforward way to dispense with this trivialisation worry. Nothing that has been said above fully equates cultural destruction with genocide. But the second worry, namely that the harms of cultural destruction pale in comparison to the harms of physical death, requires further addressing. And to address it effectively, we need to have an account of why culture is an essential human need, the deprivation of which amounts to a severe harm.

My investigation of the harms of cultural destruction in what follows appeals to the loss of agency that cultural destruction brings. I do not mean to suggest that loss of agency is the only harm that is involved in cultural destruction, in the context of genocide or otherwise.[41] However, I think it is, nevertheless, a central one. What is meant by 'agency' here is not simply our capacity to act in one or another way. The notion has a rich content, and it encompasses a cluster of capacities such as self-reflection and self-legislation, qua freedom and autonomy, the ability to plan one's life in accordance to one's set of desires, motives, inclinations, and other such cognitive and emotional contents. This type of agency is sometimes identified as 'normative' and defined as one's 'capacity to choose and to pursue our conception of a worthwhile life'.[42] It is a concept often invoked in the human rights literature, frequently by scholars seeking to provide moral foundations for human rights.[43] Normative agency is taken to be one of the central facets characterising our humanity and, in light of this, acts that deprive us of it constitute fundamental harms.

It is not uncommon in the literature to emphasize the necessity of culture to central capacities making up one's normative agency, such as autonomy. Will Kymlicka has famously argued that culture provides necessary background conditions for autonomy. In his justification of why culture is of central importance to liberalism, he notes that 'freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us'.[44] A similar line is taken by Jonathan Lear in *Radical Hope,* a philosophical study of the cultural destruction of the Crow Nation. Lear, following work done by anthropologists such as Marshal Sahlins, argues that culture is necessary not only for meaningful choice, but it is necessary for us to even imagine what such a choice might look like. This is so, because culture frames and, through this, inevitably limits the space of our imagination and our ability to anticipate things. Therefore, when a culture is gone, according to Lear, the central concepts in terms of which we understand ourselves as agents, and in terms of which our lives gain significance to us, become unavailable.[45]

The close connection between normative agency and culture is also reflected in the testimonies of genocide survivors. The following excerpts are taken from interviews that have been conducted by Louise E. Wise, as part of an investigation of the harms

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of genocide, qua social death.[46] Consider the following comments from two people from the genocide-affected region of the Nuba Mountains in Sudan, who are reflecting on their experience of the cultural and physical destruction resulting from genocide. Notice, in particular, the observation that is made regarding cultural oppression and the resulting slave mentality, which can be read as a report of loss of agency and a sense of dignity that comes with it:

> Physical destruction is certainly something that is being pursued with different intensities at different times. But I think, what is being destroyed at heart [...] when you destroy someone physically, you are not just destroying the person, you are inflicting a deeper kind of, I would call it, pain, defeat, destruction, that is psychological and extends to the rest of society. It is destruction of the social fabric as well—a way of living, culture. It is destruction of, if you like, the collective spirit of the group. If you are culturally oppressed, and you grew up as a child in this environment, what outlook will you have on yourself? *You would have a slave mentality*. Looking at yourself, you are ashamed of who you are, and that, I think, is even more sinister.[47] (emphasis mine).

Another person from the Nuba Mountains shares a similar experience of being lost and deprived of meaningfulness and agency, in the face of cultural destruction:

> I just feel like I'm just living. I'm just here, just feel like mechanical. I just feel like the rest of my life is just duties and *I'm just like a machine*, *mechanical*. I don't feel it, the type or way of life here. I don't feel the way that your life is, and everywhere, I'm not attached to it psychologically, to anywhere [. . ..] The way I feel is that life has become tasteless.[48]

The harrowing testimonies of the genocide survivors in the Nuba Mountains show that cultural destruction is not only closely connected to normative agency but is also a harm that is deep enough that some of the survivors feel *like* death or that living after such destruction is worse than death itself. Consider the following reflection of the person from the Nuba Mountains on the effects of cultural destruction:

> I am from the Nuba Mountains. If they attack me, force me to change my name [...] give me a name that does not belong to me. If they change my language. If they change my ways of life. They take my land. That's like they take my life, my whole life. [I feel a bit] dead anyway. I feel like that. It could be better to die.[49]

What testimonies such as these may suggest is that the harms of cultural destruction do run much deeper than what may initially appear. Deep damage to (and even loss of) normative agency that cultural destruction brings about may leave people with a diminished sense of autonomy and meaning. It may even bring about the feeling of losing the entire world that they had previously inhabited, insofar as our world is defined by cultural structures and the projects that we undertake in virtue of being influenced by them.[50]

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Cultural Heritage and Normative Agency

Of course, not all cultural destruction is equal. Some instances are more central to our wellbeing than others, but this does not negate its overall centrality and the severity of the harms that are inflicted when it is lost. I think cultural heritage is a particularly significant instance of culture due to the way it relates to our normative agency. This makes loss of cultural heritage a particularly pressing instance of cultural loss.

There is little consensus both in the scholarship on cultural heritage and in more practice-oriented work over what exactly the term amounts to. One way to define 'cultural heritage' is simply as a list of objects that constitute it, such as valued historic buildings, artworks, folklore, ways of life, and alike. This is an intuitively appealing approach that allows us to avoid the problems that identifying a rigid set of conditions for an object to count as heritage might give rise to.[51] But in addition to identifying a set of objects, there have also been calls to integrate a constructionist element to the definition of cultural heritage. Namely, instead of only focusing on heritage as a set of valued historical objects, we should also look at how heritage is produced, how its meanings are negotiated and renegotiated in accordance with the cultural community's circumstances.[52] An integral part of the concept of cultural heritage under such accounts is its explicit present centredness: the concept refers to ways in which objects associated with the community's past serve as resources for its present needs.[53] This move can be observed not only in scholarly inquiries into the concept of heritage but also in policy work. Former UN special rapporteur in the field of cultural rights, Farida Shaheed, defines cultural heritage as a set of resources 'through which [people] give meaning to their existence'.[54] Under such accounts, what makes cultural heritage what it is, in large part, is its intimate connection to meaning creation, both in the meaning we give to the objects themselves and the meaning that they generate, given our use of them.

Expanding on such accounts of heritage, we may argue that indeed one of the central purposes of cultural heritage is to serve as the means for members of a given community to attribute meaning to objects and practices of their past, with the goal of making sense of their present and their future.[55] In this respect, cultural heritage plays a pivotal role in helping us understand our present and presently perceived future better and make sense of our roles in them. What follows from this is that one of the things that makes cultural heritage valuable is precisely its ability to help us situate ourselves in the world in meaningful ways.

Heritage, thus understood, is related to normative agency in at least the following two ways. It allows us to establish and see ourselves as participants in a particular cultural-historical narrative, which in turn provides us with resources of self-knowledge necessary for normative agency. This follows quite straightforwardly from the understanding of heritage presented above. If cultural heritage is one of the resources we use to understand and legitimize our present (and perceived future), broadly construed, then it contributes to our sense of who we presently are and who we might become in the future. It does so by providing resources for us to tell stories of our place in the world and its history. In this respect, objects of cultural heritage have a profound influence on our identities.[56] Among other things, by attributing meaning to particular objects or practices of the past, we assert (and validate) our identities as members of the group with which said objects are associated.[57]

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Second, heritage can be understood as an expression of normative agency itself. This again follows from the definition of heritage discussed above: heritage is not about objects of the past alone. As I have noted, an important dimension of a constructionist account of heritage is its focus on the present. This suggests that objects of heritage are selected to respond to the present realities of the group, such as the need for a bonding story, legitimacy, historical continuity, and the like.[58] In this respect cultural heritage is a massively creative enterprise. Of course, heritage, as such, seems to be a group creation first and foremost, and normative agency is something that applies to individuals, but individuals play a central role in heritage creation by participating in these narratives, legitimising them or rejecting them. To deprive someone of the resources for such creation, especially in a such violent and systematic manner as genocide, can be incredibly damaging to their wellbeing and indeed is depriving them of their normative agency, not only the conditions for it.

Conclusion

What I hope to have shown in this article is that there is indeed conceptual space for treating cultural destruction (and the destruction of cultural heritage in particular) as a genocidal act. I have also provided a sketch of the harms involved in its loss. As I noted before, the normative agency approach likely cannot capture all the harms of cultural destruction and cultural-heritage destruction. We should not expect the harms of complex and multidimensional phenomena like genocide and cultural destruction all to be explainable in terms of a single feature, even one as rich as their relation to normative agency. Nonetheless, normative agency is crucial to understanding many of these harms, and the account I provided of these harms in particular shows that the harms of cultural destruction are very much continuous with those of other genocidal acts.

It should also be noted that I have not said anything so far about the means of protecting cultural heritage during genocide justified by this approach. What precise action needs to be taken to protect heritage in the context of genocide is a further question, the answer to which depends on various other competing considerations and obligations we might have during a genocide, some of which might indeed override protection of heritage. A good contender to override an obligation to protect cultural heritage might be our obligation to physically save people. Indeed, it does seem difficult to come up with cases in which saving physical lives would not take priority over saving cultural heritage, even if we establish that loss of culture and heritage is a harm that is comparable in its severity to physical loss of life.

This is not to say that considerations having to do with culture are not going to figure in weighing our obligations even in cases such as these. Card's reflections on social vitality and Wise's interviews with the Sudanese genocide survivors provide a strong case for the claim that our physical lives are intimately linked with culture and its production, so much so that one may not be able to conceive of physical life without it.[59] Additionally, consider how widespread during numerous instances of genocides the targeting and persecution of those who are often seen as primary creators of culture – i.e. intellectuals and artists – has been.[60]

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All these things taken together make the question of what ought to be prioritized in addressing atrocities such as genocide incredibly complicated and one that often involves difficult decisions and moral compromises. My arguments here are not supposed to establish that we have an obligation to protect cultural heritage over and above everything else in the context of genocide. Rather the aim is to show that cultural (and heritage) destruction may indeed play an important component part in genocide, and, in virtue of this, the destruction of it is not something that we can easily dismiss. How exactly the destruction of heritage in such contexts would be most effectively addressed, and how it interacts with other competing obligations we might have, is a different question that I suspect will depend heavily on the particularities of concrete cases.

Relatedly, the arguments presented here are not intended to directly inform the law regarding cultural destruction. There is oftentimes a gap between scholarly theorising and what is adopted in the law, which is largely because what is enshrined in the law is determined by a variety of additional (and often times more pragmatic) considerations, such as enforceability and the likelihood of the specific law being adopted (especially on the international level). How such considerations bear on the legal implications of my arguments is a further question, which is unfortunately beyond the scope of this article.

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NOTES

1 James Cuno, "The Responsibility to Protect the World's Cultural Heritage," *Brown Journal of World Affairs,* XXIII, 1, (2016): pp. 97-109; Irina Bakova, "Fighting Cultural Cleansing: Harnessing the Law to Preserve Cultural Heritage, "*Harvard International Review* (2015). For a nuanced and detailed examination of the claim that protecting people and protecting heritage are one and the same, see Erich H. Mathes, "Saving Lives or Saving Stones? The Ethics of Cultural Heritage Protection in War" in *Public Affairs Quarterly,* 32, 1 (2018), pp. 67-84.

2 For example, cultural-heritage destruction has been famously treated as a war crime both in the ICTY (for instance, shelling of Dubrovnik) and by the ICC in the Al Mahdi judgment. For an in-depth discussion of such cases, see Ann Marie Thake, "The Intentional Destruction of Cultural Heritage as a Genocidal Act and a Crime Against Humanity," *European Society for International Law Conference Paper Series*, 10, 5, (2017): 1-25

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3 Thake Op. Cit. ; Edward Luck, "Cultural Genocide and the Protection of Cultural Heritage," *J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy,* 2 (2018): 4-36; Elisa Novic, *The Concept of Cultural Genocide: An International Law Perspective,* (Oxford: Oxford University Press, 2016).

4 Consider the use of 'ethnocide' and 'cultural genocide' in the UN Declaration on the Rights of Indigenous People. Neither of the terms is explicitly defined in the declaration, but we can read their implied definitions off Article 7, where the acts constituting cultural genocide and ethnocide are mentioned. What distinguishes these processes from genocide most explicitly is the lack of mention of genocidal intent to destroy a group in large or in part. United Nations Permanent Forum on Indigenous Issues, *United Nations Declaration of the Rights of Indigenous People,* Art. 7.

5 There is equally little consensus over what groups can be considered as targets of genocide. In particular, there is much debate over whether political groups should be included in the traditional list found in the Genocide Convention, according to which, genocide can be committed only against ethnic, racial, religious, and national groups. For arguments representative of this debate, see Daniel Feierstein, *Genocide as a Social Practice: Recognizing Society under the Nazis and Argentina's Military Juntas,* (Rutgers, NJ: Rutgers University Press, 2014), pp. 14-16; Beth Van Schaack, "The Crime of Political Genocide: Repairing the Genocide Convention's Blind Spot" in *The Yale Law Journal,* 106, 7 (1997): 2259-2291.

6 According to Article II of the Genocide Convention, [G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:

(a) Killing members of the group;

(b) Causing serious bodily of mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

7 However, cultural destruction was used as a signifier of genocidal intent in the *Krstic* judgment at the ICTY.

8 Novic op. cit. 4-9.

9 Edward Luck, "Cultural Genocide and the Protection of Cultural Heritage" in *J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy* (2018), p. 23.

10 Novic op. cit., p.4.

11 Lindsey Kingston, "The Destruction of Identity: Cultural Genocide and Indigenous Peoples" in *Journal of Human Rights,* 14,1 (2015): 65.

12 As quoted in Luck op. cit. 24.

13 Christopher Powell, "What do Genocides Kill?: A relational Conception of Genocide" in *Journal of Genocide Research,* 9, 4 (2007), p. 532, Kingston op. cit., Luck op. cit.

14 Luck op. cit., 24

15 Ibid.

16 Novic op. cit. 8.

17 Claudia Card, "Genocide and Social Death" in *Hypatia,* 18, 1, (2003).

18 Card op. cit. 63.

19 Importantly, under Card's account, genocide can occur even if some cultural artefacts remain or if people are not entirely alienated from their culture (or end up being able to reconnect with it or other cultures). One's social identity *per se*—or the ability to form a social identity—does not need to disappear entirely. Social death rather points to the members of the cultural community no longer being able to facilitate their identities in ways that they have traditionally been facilitated in that cultural group. As Card notes, '[t]he survival of Jewish culture does not show that social death was not central to the evil of the Holocaust, any more than the fact of survivors show that a mass murder was not genocidal' (ibid., 251).

20 To what extent this particular act could be considered to be genocide is not clear, given that the intention might not be to destroy a group itself, but rather to root out injustice by destroying a certain cultural practice. If this were the case, then the intention element, necessary for proving genocide, might not be established.

21 Claudia Card, *Confronting Evils,* (Cambridge: Cambridge University Press, 2012). p. 251

22 In other words, 'evil practices are so essential to [the group] that they could not be eliminated without eliminating the group' (Card, 251). The question of the criteria by which we would judge the harmfulness (or evilness) of a group's cultural practices is a broad and complicated one, and I regrettably do not have

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space to address it here. For my purposes here, it suffices to assume that there are some such criteria without committing to a particular view of what they are.

23 Card Op. cit. 252

24 Card Op. cit., p. 236. Similarly, recall views such as Anna Philippa Vrdoljak's, who Novic characterizes as being committed to the claim that cultural genocide is an intrinsic characteristic of every process of genocide, which can be empirically observed. See Novic Op. cit. 8

25 It must be noted that this ambiguity may be orthogonal to Card's work. Card is not interested in providing a conceptual analysis of the term 'genocide', but rather he focuses on identifying the distinct evil of genocide. However, making this distinction is crucial if we want to capture the conceptual connection between cultural destruction and genocide.

26 See Card Op. Cit. 237: 'The intentional production of social death in a people or community is a central evil of genocide'.

27 This may seem unintuitive to some. Central to (at least) many large-scale cultural traditions are mechanisms to transmit cultural practices across generations, ensuring that the tradition does not depend on the survival of any one person. Taking culture at this coarse level of grain, it is indeed unintuitive that each individual loss of life entails an appreciable cultural loss. But culture also functions on a more fine-grained level, at which individual participation is central in sustaining and transforming these collective higher-level practices. At this finer level of grain, individual loss of life certainly produces loss in social vitality (and with it, culture), albeit quite possibly small enough to not have significant impact on larger cultural phenomena. Nonetheless, cultural loss on this finer-grained level functions in the same way as it would on the coarse-grained level. The difference between the two comes down to numbers: it is the compounding of individual losses of social vitality at the fine-grained level that results in large-scale losses of social vitality at the coarse-grained level.

28 In what follows, I focus on cases from the ICTR, but we can observe similar interpretations in other tribunals, such as the International Criminal Tribunal for the Former Yugoslavia. For a detailed discussion of this, see Carola Lingaas, "Imagined Identities: Defining the Racial Group in the Crime of Genocide" in *Genocide Studies and Prevention: An International Journal,* 10, 1

29 Agnieszka Szpak, "National, Ethnic, Racial, and Religious Groups Protected against Genocide in the Jurisprudence of the *ad hoc* International Criminal Tribunals" in *The European Journal of International Law* 23, 1: 162

30 Ibid.

31 Lingaas Op. cit. 93

32 *Prosecutor* v. *J-P. Akayesu,* Trial Chamber 1998, para. 514, as quoted in Lingaas Op. Cit. 93

33 For a similar point, see Lingaas, Op. Cit. p. 84. After reflecting on how the notion of race has changed over the years since the adoption of the Genocide Convention, Lingaas notes: '[c]olloquially, however, the meaning of race is still very much linked to the outer appearance of people, particularly skin colour. In conclusion it can be noted that there are no biologically different human races. Yet people's features are still commonly used to determine their race'.

34 Consider the Trial Chamber's reference to the report by the Commission of Experts on Rwanda and its statement that 'to recognise that there exists discrimination on racial or ethnic grounds, it is not necessary to presume or posit the existence of race or ethnicity itself as a scientifically objective fact' (*Prosecutor V. Rutaganda,* Trial Chamber Judgment, December 6, 1999, ICTR-96-3-T, para. 56, as quoted in Lingaas Op. Cit. 94)

35 *Prosecutor v. Bagilishema,* Trial Chamber Judgment, June 7, 2001, ICTR-95-1A-T, para. 65, as quoted in Lingaas Op. Cit. 94

36 Certainly, cultural loss would result from such physical destruction of people, but it seems that then we should treat it as an effect of genocidal killing, rather than the genocidal act itself. In turn, such cultural loss is a necessary condition for genocide only in the weaker sense outlined above: some cultural loss is a necessary consequence of any destruction of those who produce it.

37 It is likely that other conditions will need to be met too in order to establish genocidal intent, such as there being a larger pattern of targeting the group, which might mean that other crimes such as mass killing, severe mental harm, and alike, are being committed in addition.

38 William Schabas, *Genocide in International Law: The Crime of Crimes,* (Cambridge: Cambridge University Press, 2009).

39 Vrdoljak, op. cit. 163.

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40 See UN Doc. A/C.6/SR.83, item 30, 199 (Denmark), (Sixth Comment), quoted in Anna F. Vrdoljak, *International Law, Museums and Return of Cultural Objects,* (New York: Cambridge University Press, 2006), p. 169.

41 In this article, I focus on harms of genocidal cultural loss to the individual, as opposed to the group. By this I do not mean to suggest that this is the only plausible dimension of harms of genocide. A complete analysis of such harms will involve inquiring into the harms done to the group, as opposed to the individuals that make it up. This is a complex issue for which I regrettably do not have enough space to address here. In light of this, I leave it for future work.

42 See James Griffin, *On Human Rights,* (Oxford: Oxford University Press, 2008), p.45

43 One of the most famous and best developed contemporary accounts of normative agency and the importance of it to our moral status can be found in the work of James Griffin. Griffin Op. Cit. But the notion also prominently figures in a variety of other works. In some of them, similarly to Griffin's work, normative agency is something from which human rights are explicitly derived. See Allen Gewirth *The Community of Rights,* (Chicago: University of Chicago Press, 1996). In other works, agency is but one component of the larger list of features associated with human rights. See John Finnis *Natural Law and Natural Rights* (Oxford: Clarendon, 1980); S. Matthew Liao "Human Rights as Fundamental Conditions for A Good Life" in Cruft, Liao, Renzo (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015)

44 Will Kymlicka, *Multicultural Citizenship,* (Oxford: Oxford University Press, 2003), p. 83. For similar arguments, see Joseph Raz, "Multiculturalism: A Liberal Perspective" in *Ethics in the Public Domain,* (Oxford: Oxford University Press, 1994).

45 Jonathan Lear, *Radical Hope: Ethics in the Face of Cultural Devastation,* (Cambridge, MA: Harvard University Press, 2006), p. 56.

46 Louise E. Wise, 2017, "Social Death and the Loss of a 'World': An Anatomy of Genocidal Harm in Sudan" in *International Journal of Human Rights,* 21:7, p. 838-865. I cannot do justice here to Wise's insightful and original discussion of the harms of genocide *qua* social death, but I must acknowledge that her paper, and especially Wise's interviews with the genocide survivors from Sudan, significantly influenced my thinking about cultural destruction in the context of genocide. Neither Wise nor Card explicitly talk about loss of normative agency, but I see what I do here as a natural continuation of their work.

47 Wise op. cit. 847.

48 Ibid.

49 Ibid.

50 Wise, op. cit.

51 Consider the various exclusions that accounts of cultural heritage can create. For instance, if we take cultural heritage to primarily refer to tangible historical objects of 'universal value'—something that seems to have been a dominant paradigm in the first half of the 20th century—such as historic buildings, artworks, etc., then we seem to exclude a set of intangible practices that are equally fitting to our list, at least given our colloquial intuitions about heritage. See Neil Silberman, 2012. "Heritage Interpretation and Human Rights: Documenting Diversity, Expressing Identity, or Establishing Universal Principles?" in *International Journal of Heritage Studies,* 18, 3: 245-256

52 Such a characterization of cultural heritage, while to one degree or another adopted by the majority of the contemporary scholars, is often traced back to David Lowenthal. See David Lowenthal, *The Past is a Foreign Country,* (Cambridge, UK: Cambridge University Press, 1988/2015), David Lowenthal, *The Heritage Crusade and the Spoils of History,* (Cambridge, UK: Cambridge University Press, 1998). See also Laurajane Smith, *The Uses of Heritage,* (New York: Routledge, 2006), Brian Graham and Peter Howard, *The Ashgate Research Companion to Heritage and Identity,* (Adelrshot and Burlington: Ashgate Publishing, 2006)

53 Graham and Howard Op. cit. 2, also Rodney Harrison, *Heritage: Critical Approaches,* (New York: Routledge, 2013) p. 14

54 Farida Shaheed, "Cultural Heritage as a Human Right" in *ICH Courier,* 13 (2013), p. 3.

55 For as similar approach, see Sarah McDowell, "Heritage, Memory and Identity" in Brian Graham and Peter Howard (eds.) *Ashgate Research Companion to Heritage and Identity,* Adelrshot and Burlington: Ashgate Publishing, also G. J. Ashford, Brian Graham, J. E. Tunbridge, *Pluralizing Pasts: Heritage, Identity and Place in Multicultural Societies,* (London and Ann Arbor: Pluto Press, 2007)

56 For a more in-depth analysis of the link between cultural heritage and identity, see Graham and Howard 2008; see also the special issue on heritage and identity of the *International Journal of Heritage Studies*, 12, (2006): 3-114

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57 Macdonald has argued that cultural heritage can even be seen not just as a representation of identity, but something that is its material embodiment. See Sharon Macdonald, "Undesirable Heritage: Fascist Material Culture and Historical Consciousness in Nuremberg, in *International Journal of Heritage Studies*, 12,1, (2006): p. 11

58 See Graham and Howard, Op. Cit. 6. Graham and Howard, referencing Lowenthal, additionally note that cultural heritage provides a justification and validation for the community's present actions: 'actions and policies are justified by continuing reference to representations and narratives of the past' (ibid.). This feature of cultural heritage can also make it a powerful tool for nefarious ends, such as legitimization of narratives of exclusion and oppression, justification of various harmful practices, and alike (ibid.). This is an important feature of cultural heritage and one that requires a deeper investigation that I regrettably do not have space for here. But I think it is likely that such an investigation would reveal that, much like cultural heritage, can be something that is essential for our normative agency; it can easily also work as something that is an impediment to it and to what extent this is so will be heavily dependent on the particularities of each case. This said, I do not think that this stops us from establishing the positive effects of cultural heritage on our normative agency. It is no more an obstacle to establishing the importance of cultural heritage to our normative agency than harmful speech is an obstacle to establishing that freedom of speech is important to our wellbeing. Rather, it directs our attention to the complicated nature of cultural heritage and cautions us to be sensitive to how we evaluate it and its various uses.

59 Recall the deeply painful testimony of one of the Sudanese genocide survivors quoted above, who reflecting on cultural loss during the genocide, notes that it would be better not to live than to live without one's culture. Wise, Op. Cit.

60 Peter Balakian provides a detailed discussion of how the persecution of intellectuals, artists, and cultural leaders has been an integral part of the Armenian genocide. Balakian argues that one of the purposes of such persecution was to silence the voice of the Armenian community. See Peter Balakian, "Raphael Lemkin, Cultural Destruction, and the Armenian Genocide" in *Holocaust and Genocide Studies,* 27, 1, 2013: 65-68

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