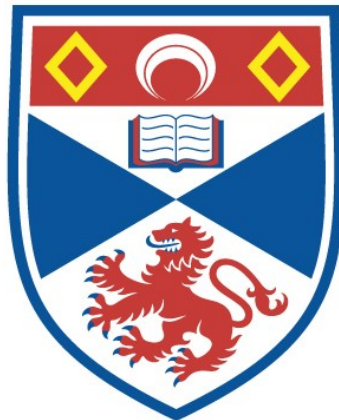


A HUMAN RIGHT TO CULTURAL HERITAGE

Rasa Davidaviciute

A Thesis Submitted for the Degree of PhD  
at the  
University of St Andrews



2022

Full metadata for this item is available in  
St Andrews Research Repository  
at:  
<http://research-repository.st-andrews.ac.uk/>

Identifiers to use to cite or link to this thesis:

DOI: <https://doi.org/10.17630/sta/526>  
<http://hdl.handle.net/10023/27848>

This item is protected by original copyright

# A Human Right to Cultural Heritage

Rasa Davidaviciute



University of  
St Andrews

This thesis is submitted in partial fulfilment for the degree of  
Doctor of Philosophy (PhD)  
at the University of St Andrews

March 2022

## **Candidate's declaration**

I, Rasa Davidaviciute, do hereby certify that this thesis, submitted for the degree of PhD, which is approximately 57,000 words in length, has been written by me, and that it is the record of work carried out by me, or principally by myself in collaboration with others as acknowledged, and that it has not been submitted in any previous application for any degree. I confirm that any appendices included in my thesis contain only material permitted by the 'Assessment of Postgraduate Research Students' policy.

I was admitted as a research student at the University of St Andrews in August 2018.

I received funding from an organisation or institution and have acknowledged the funder(s) in the full text of my thesis.

Date 4 June 2022

Signature of candidate

## **Supervisor's declaration**

I hereby certify that the candidate has fulfilled the conditions of the Resolution and Regulations appropriate for the degree of PhD in the University of St Andrews and that the candidate is qualified to submit this thesis in application for that degree. I confirm that any appendices included in the thesis contain only material permitted by the 'Assessment of Postgraduate Research Students' policy.

Date 3 June 2022

Signature of supervisor

## **Permission for publication**

In submitting this thesis to the University of St Andrews we understand that we are giving permission for it to be made available for use in accordance with the regulations of the University Library for the time being in force, subject to any copyright vested in the work not being affected thereby. We also understand, unless exempt by an award of an embargo as requested below, that the title and the abstract will be published, and that a copy of the work may be made and supplied to any bona fide library or research worker, that this thesis will be electronically accessible for personal or research use and that the library has the right to migrate this thesis into new electronic forms as required to ensure continued access to the thesis.

I, Rasa Davidaviciute, confirm that my thesis does not contain any third-party material that requires copyright clearance.

The following is an agreed request by candidate and supervisor regarding the publication of this thesis:

**Printed copy**

No embargo on print copy.

**Electronic copy**

No embargo on electronic copy.

Date 4 June 2022

Signature of candidate

Date 3 June 2022

Signature of supervisor

## **Underpinning Research Data or Digital Outputs**

### **Candidate's declaration**

I, Rasa Davidaviciute, hereby certify that no requirements to deposit original research data or digital outputs apply to this thesis and that, where appropriate, secondary data used have been referenced in the full text of my thesis.

Date 4 June 2022

Signature of candidate

# Abstract

In recent years, global institutions like the UN and UNESCO have increasingly treated obligations to preserve cultural heritage as obligations to uphold human rights. Owing to the relative novelty of this approach, little work has been done to see what exactly such rights would be and how this treatment of cultural heritage could be justified. Not only is it unclear what the foundations of a human right to cultural heritage are or what precisely such a right ought to entail, but it is equally uncertain what is meant by cultural heritage in the first place. Considering this, the aims of the thesis are the following: (i) provide a philosophically robust definition of cultural heritage and its social value that could serve as a foundation of the human rights approach to cultural heritage; (ii) building on this understanding of cultural heritage, provide a systematic conceptual analysis of obligations to preserve cultural heritage understood in the language of human rights. The thesis defends a constructionist-inspired account of cultural heritage, according to which cultural heritage is not primarily about historical objects and practices, but rather about how we employ such objects and practices to make sense of our internal and external worlds, both as individuals and as communities. Equipped with this understanding of cultural heritage the thesis provides a justification of a human right to cultural heritage by appealing to the centrality of cultural heritage to our individual normative agency. This is followed by a discussion of the limits of a human right to cultural heritage, where such limits are determined by its harmful uses. Lastly, the thesis provides a discussion of legal duties that a human right to cultural heritage will generate and briefly considers whose responsibility such duties are.

## Acknowledgements

Thanks to Rowan Cruft and Adam Etinson, my PhD supervisors, without whose expertise, patience, and encouragement this thesis would not have been written. Thanks also to the philosophical community at the St Andrews and Stirling Graduate Programme in Philosophy. I have made many friends here and the warm and collegial environment contributed greatly to my research. A special thank you to Lisa Bastian, Katharina Bernhardt, Joe Bowen, Matthew Clark, Eline Gerritsen, Matthew Green, Jakob Hinze, Savas Ioannou, Lara Jost, Josh Kelsall, Ethan Landes, Lixiao Lin, Colin McLean, Anh Quan Nguyen, Anuj Puri, Paolo Savino, Saranga Sudarshan, Deryn Thomas, Maria Jimena Clavel Vazquez, and Xintong Wei. It was a privilege to become friends and to get to talk philosophy with you.

I am grateful to the University of St Andrews, *Philosophical Quarterly* and the Scottish Graduate School for Arts and Humanities for their generous funding for the three years it took me to complete this thesis. I would also like to thank the University of Connecticut's Philosophy Department and especially Professor Lewis Gordon and Dr Suzy Killmister, for their invaluable contribution in helping me form the foundation for my doctoral work. Also thank you to Teresa Allen, my colleague at the University of Connecticut and my best friend and favourite person to do philosophy with.

Lastly, my life, and by extension this thesis, would be insurmountably worse without four people: Jūratė, Gintas, Colin, and Eglutė—*nėra pakankamai žodžių išreikšti mano meilę ir dėkingumą jums.*



# Table of Contents

<b>Table of Contents</b> .....	<b>i</b>
<b>Introduction</b> .....	<b>1</b>
Chapter Outlines .....	3
Chapter 1: Cultural Heritage in the Work of UNESCO .....	3
Chapter 2: Cultural Heritage as a Symbolic Form.....	3
Chapter 3: Foundations of a Human Right to Cultural Heritage.....	4
Chapter 4: A Human Right to Cultural Heritage.....	4
Chapter 5: The Harms of Cultural Heritage.....	5
Chapter 6: Duties to Protect Cultural Heritage .....	5
<b>Part I: Cultural Heritage</b> .....	<b>6</b>
<b>Chapter 1: Cultural Heritage in the Work of UNESCO</b> .....	<b>7</b>
1.1 Introduction.....	7
1.2 Culture and cultural heritage in UNESCO’s work through the years .....	8
1.3 Universalist and particularist models of cultural heritage.....	14
1.4 Conclusion: Human rights and the two models of cultural heritage .....	18
<b>Chapter 2: Cultural Heritage as a Symbolic Form</b> .....	<b>22</b>
2.1 Introduction.....	22
2.2 Desiderata for the concept of culture.....	22
2.2.1 Scope .....	23
2.2.2 Stasis and homogeneity .....	27
2.2.3 Culture, elitism and exclusion .....	30
2.3 Culture and symbolic forms .....	33
2.3.1 Cassirer, the Marburg School and philosophy of culture .....	33
2.3.2 Symbolic forms.....	36
2.4 Cultural heritage as symbolic form.....	38

2.4.1 The construction of cultural heritage.....	40
2.5 Concluding remarks.....	42
<b>Part II: A Human Right to Cultural Heritage .....</b>	<b>46</b>
<b>Chapter 3: Foundations of a Human Right to Cultural Heritage .....</b>	<b>47</b>
3.1 A human right to cultural heritage .....	47
3.2. Dignity and the philosophical foundations of human rights .....	53
3.3 Dignity and self-governance.....	58
3.4 Conclusion .....	61
<b>Chapter 4: A Human Right to Cultural Heritage .....</b>	<b>63</b>
4.1. Introduction.....	63
4.2. Cultural heritage and normative agency .....	68
4.3. Cultural heritage and our sense of self .....	71
4.4. Objections.....	74
4.4.1 Is cultural heritage really so important?.....	75
4.4.2 Whose cultural heritage? .....	77
4.5 Conclusion .....	82
<b>Chapter 5: The Harms of Cultural Heritage.....</b>	<b>85</b>
5.1 Introduction.....	85
5.2 In-group and out-group narratives.....	88
5.2.1 Harms of in-group and out-group narratives .....	90
5.3 Heritage as justification for harms .....	94
5.4 Appropriation and cultural theft .....	96
5.4.1 Cultural appropriation .....	96
5.4.2 The wrongs of cultural appropriation.....	98
5.5 The limits of a right to cultural heritage.....	101
5.5.1 Taxonomy revisited .....	101
5.6 Conclusion .....	108

<b>Chapter 6: Duties to Protect Cultural Heritage .....</b>	<b>110</b>
6.1 Introduction: Human rights and duties.....	110
6.2 Duties to preserve what? .....	112
6.2.1 Conflicts between heritage and history.....	115
6.3 What duties?.....	121
6.3.1 Duty to respect .....	122
6.3.2 Duty to protect.....	125
6.3.3 Duty to fulfil .....	129
6.3.4 Is this account of duties too demanding?.....	131
6.4. Whose duties?.....	133
6.4.1 Non-state actors: Corporations and military groups .....	133
6.5. Conclusion .....	137
<b>Conclusion .....</b>	<b>138</b>
Cultural Heritage .....	138
A Human Right to Cultural Heritage.....	140
<b>Bibliography.....</b>	<b>143</b>

# Introduction

Many recognize that cultural heritage is valuable and deserves protection. But what sort of protection does cultural heritage deserve, and why is it so valuable? These questions do not have singular and straightforward answers. To some extent, the difficulties here trace back to there not being an agreed upon understanding of what cultural heritage is. For a long time, there was a tendency in cultural heritage preservation to primarily refer to cultural heritage as material movable or immovable monuments and artifacts of high aesthetic, historic or scientific value (Jokilehto 2012). As a result, the justification and means of its protection were grounded in the aesthetic, historic and scientific characteristics that were seen as intrinsic qualities of objects of cultural heritage.

Over the last thirty years, however, cultural heritage preservation has taken a new direction. The list of objects that count as cultural heritage has broadened significantly to include intangible historical objects such as customs and historical practices that can be seen as collective expressions of identity of communities with which that heritage is associated (Silberman 2012). In light of this, there has also been a shift in attitudes towards the value of cultural heritage. More precisely, in answering the question of what makes cultural heritage valuable (and thus worthy of preservation), the sole focus is no longer just on its aesthetic, historical and scientific importance; instead, it is viewed as something indistinguishable from core human interests, such as identity facilitation and expression, communal belonging, and the like.<sup>1</sup>

With this shift in understanding of what constitutes cultural heritage and its value, the rhetoric regarding its preservation has also changed significantly. Practitioners and policy makers alike have increasingly been paying much more attention to the human

---

<sup>1</sup> A good example of the human dimension of cultural heritage involves cases of cultural heritage destruction during military conflict. As Robert Bevan puts it, in cases such as these: “a mosque, for example, is not simply a mosque; it represents to its enemies the presence of a community marked for erasure. A library or art gallery is a cache of historical memory, evidence that a given community’s presence extends into the past and legitimizing it in the present and on into the future (Bevan 2006, 8).

dimension of cultural heritage and, considering this, have started presenting reasons to preserve cultural heritage as explicit obligations to human beings and the fulfilment of their needs.<sup>2</sup> The apotheosis of such a shift has been the introduction of human rights rhetoric to cultural heritage preservation in the work of institutions such as the United Nations (UN) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). It is common to relate obligations to rights. If a person has a right to some action, others have obligations to perform said action. Following this reasoning, we have obligations to safeguard cultural heritage, because people have human rights to cultural heritage. In other words, our obligations to preserve cultural heritage are derivative from our obligations to uphold human rights. The intention of this approach is to emphasize the urgency and the special importance of cultural heritage protection: we must protect cultural heritage not only due to its aesthetic and historical importance, but as a means of protecting human beings and their rights.<sup>3</sup>

Owing to the relative novelty of this approach, no philosophical work has been done to see what the content of such rights would be and how this treatment of cultural heritage could be justified.<sup>4</sup> The work outside of philosophy has also been mostly limited to either concrete policy questions of cultural heritage protection in the human rights

---

<sup>2</sup> As Silverman and Ruggles claim, heritage is an “essential component of human rights because the very concept of heritage demands that individual and group identities be respected and protected. Heritage insists on the recognition of a persons or community’s essential worth.” (2007, 5)

<sup>3</sup> Emblematic of the start of the integration of human rights rhetoric to cultural heritage preservation is the 2009 UN Human Rights Council’s establishment of the position of the Independent Expert in the Field of Cultural Rights, which was subsequently extended to a permanent Mandate of the Special Rapporteur in the Field of Cultural Rights. The mandate of the Special Rapporteur is to continuously survey the situation of human rights to culture (and other human rights to which cultural heritage is relevant, such as rights to education, freedom of expression, freedom of religion, self-determination, etc.), contribute to elaboration on such rights and to enhance them (Fernandez 2019). Both Special Rapporteurs, Farida Shaheed and Karima Bennouna, have paid special attention to human rights to cultural heritage in their work for the mandate.

<sup>4</sup> The philosophical literature on broader questions in cultural heritage ethics is rapidly expanding. See, among others, (Frowe 2019), (Frowe and Matravers 2019), (Korsmeyer 2018), (Bicknell, Korsmeyer and Judkins 2019), (Matthes 2013), (Matthes 2018b), (Matthes 2018a), (O’Nils and Thomas 2020), (O’Nills 2020), and (Scarre and Scarre 2006).

framework (Silverman and Ruggles 2007), anthropological and sociological studies of the impact of the loss of cultural heritage on the groups with which it is associated (Arizpe and Amescua 2013), and how to protect cultural heritage *qua* human right in international law.<sup>5</sup> Not only is it unclear what the foundations of human rights to cultural heritage are or what precisely such rights ought to entail, but it is equally uncertain what is meant by cultural heritage in the first place. In light of this, in this thesis my aims are the following: (i) provide a philosophically robust definition of cultural heritage that would serve as a foundation for a human right to cultural heritage; (ii) building on this understanding of cultural heritage, provide a systematic conceptual analysis of obligations to preserve cultural heritage understood in the language of human rights.

## Chapter Outlines

### *Chapter 1: Cultural Heritage in the Work of UNESCO*

In the first chapter I address how the concept of cultural heritage and the concept of culture that underwrites it evolved in the work of UNESCO. UNESCO is the foremost global institution responsible for setting both the definition of cultural heritage and providing guidelines for its preservation policy (Fernandez 2019); therefore, looking at the way cultural heritage appears in its discourse is a crucial first step in laying the foundations for a human right to cultural heritage. I outline the development of two distinct models of culture and cultural heritage, a universalist and particularist one and conclude with reasons for a need for a more robust philosophical analysis of the concept of cultural heritage and the concept of culture under which cultural heritage falls.

### *Chapter 2: Cultural Heritage as a Symbolic Form*

Here I propose a constructionist-inspired account of cultural heritage that is meant to underwrite the human right to cultural heritage. I begin by presenting three desiderata that a successful account of culture and cultural heritage should follow. I then

---

<sup>5</sup> See (Blake 2015), (Francioni and Gordley 2013), (Francioni and Vrdoljak 2020), and (Lixinski 2019).

present a novel account of cultural heritage that takes inspiration from Ernst Cassirer's theory of symbolic forms. I argue that cultural heritage can be understood as a distinct symbolic form. As such it embodies a way of attributing meaning to the objects and practices of a community's past that is used as this community's way of making sense of the present and future. Often this comes in the form of identity building: cultural heritage objects, through their role in the history of the communities with which we associate ourselves, help us make sense of who we are, both as individuals and as members of the communities to which we belong.

### ***Chapter 3: Foundations of a Human Right to Cultural Heritage***

I outline some preliminary considerations about the conceptual foundations of a human right to cultural heritage and the importance of such foundations. I argue that the work that has been done so far to ground a human right to cultural heritage is insufficient. It can only show that a legal human right to cultural heritage would not be inconsistent with other rights outlined in the international bill of human rights. What precisely would justify such a treatment of the preservation of cultural heritage, as well as how such rights should be conceptualized, remains an open question. What is more, a human right to cultural heritage is vulnerable to the human rights inflation worry. To answer these concerns sufficiently, we need a clearer understanding of what grounds a human right to cultural heritage. In this chapter I outline the preliminaries of grounding a human right to cultural heritage in dignity and, ultimately, normative agency.

### ***Chapter 4: A Human Right to Cultural Heritage***

Here I present an account of the foundations of a human right to cultural heritage. My argument relies on showing how our identity is relevantly connected to normative agency, a well-established universal interest of ours. Ultimately, I argue that one of the reasons why identity and, hence, cultural heritage (through its ability to facilitate our identities) draws the protection of human rights is because it is central in securing one of our universal human interests, namely normative agency. Human rights to cultural heritage are thus grounded in its importance as both a condition for and a product of normative agency.

### *Chapter 5: The Harms of Cultural Heritage*

In this chapter I address the harms of cultural heritage and explore to what extent such harms could set the limits of a right to cultural heritage. I propose a taxonomy of harms of cultural heritage that contains three large parts: (i) in-group and out-group narratives, (ii) direct harm, (iii) cultural appropriation. These categories are not intended to encompass all the ways in which cultural heritage can be used for nefarious ends, but they seem to be the most prominent ones. I argue for a form of normative particularism when it comes to outlining the limits of a human right to cultural heritage.

### *Chapter 6: Duties to Protect Cultural Heritage*

In this chapter I explore what legal obligations<sup>6</sup> will a human right to cultural heritage generate, what are the objects of such obligations, how should such obligations be best understood and who can be legitimately tasked with carrying them out. I argue that such obligations protect practices involved in cultural heritage making and use—the protection of objects themselves is derived from the protection of said practices—and that duties to protect cultural heritage may be either positive or negative. Lastly, while my primary focus is on obligations states have towards their subjects, I conclude the chapter with a brief discussion of why such obligations should be extended to non-state actors, such as corporations and military groups.

---

<sup>6</sup> I use ‘duties’ and ‘obligations’ interchangeably throughout the thesis.



## **Part I: Cultural Heritage**

# Chapter 1:

## Cultural Heritage in the Work of UNESCO

### 1.1 Introduction<sup>7</sup>

The purpose of this chapter is to investigate how cultural heritage is defined, both more broadly and in the context of human rights, in the work of UNESCO and the international organizations related to it. UNESCO is one of the chief institutions responsible for setting the global policy agenda for cultural heritage—among which is treating cultural heritage as a human rights issue—so it is natural to look at how cultural heritage is defined in its work as a point of departure.

Perhaps unsurprisingly we cannot find a fully organized and clear definition of the concept of cultural heritage in the work of UNESCO. The concept has undergone significant change during the decades of UNESCO's work and its differing articulations have reflected the organization's shifting priorities and global and regional political realities. But this is not to imply that we cannot identify general models of cultural heritage present in UNESCO's work. In what follows, I identify two distinct yet concurrent ways of defining cultural heritage, both of which are currently at play in UNESCO's dealings with the concept—a *universalist* and a *particularist* one. I discuss their historical developments, through a changing understanding of the broader concept of culture in UNESCO's work and identify ways in which it underwrites UNESCO's current treatment of cultural heritage.

The universalist model is, at least in part, underwritten by an understanding of culture that focuses on the perceived common achievements of humanity. The general tendency here is to treat cultural heritage as a list of the most valuable and extraordinary material cultural artifacts that have been created throughout humanity's history. The particularist model focuses on cultural heritage that is associated with smaller-scale

---

<sup>7</sup> This chapter is partly based on the research I did for a seminar paper on cultural rights in the autumn of 2016 at the University Connecticut's anthropology department.

concrete cultural communities. It is underwritten by a significantly broader concept of culture that treats virtually all human creative activity as cultural. Under the particularist model, objects of cultural heritage are comprised of a list of significant historical manifestations of a group's cultural identity, where such objects are both material and immaterial.

The model most readily associated with human rights concerns in the work of UNESCO and similar institutions<sup>8</sup> is the particularist one and considering this I will primarily be concerned with it in the following chapters of the thesis.<sup>9</sup> I conclude this chapter with a brief discussion of reasons for requiring a more explicit philosophical account of the particularist model of cultural heritage if we want to make sense of a human right to cultural heritage.

## **1.2 Culture and cultural heritage in UNESCO's work through the years**

UNESCO was created in 1945 with one overarching goal in mind – to “create a better [...], a more equal, world through ‘altering the minds of men’” (Nielsen 2011, 273).<sup>10</sup> As Nielsen observes, the founders of UNESCO believed that one of the central reasons for conflict and war is prejudice and ignorance regarding human diversity (ibid., 274). The purpose of UNESCO, hence, is to combat such prejudice and ignorance and to facilitate the intellectual and moral solidarity of mankind by ensuring “the free exchange of ideas and knowledge [...] for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives” (UNESCO 1945).

Culture, as one of UNESCO's most relevant areas of influence, plays a pivotal role in achieving the goals of this project in at least two different ways, each of which

---

<sup>8</sup> Such as the United Nations Office of the High Commissioner for Human Rights and especially the work of the Special Rapporteur in the Field of Cultural Rights.

<sup>9</sup> I do not mean to suggest that the universalist model raises no human rights concerns, and I will come back to this in the conclusion of the thesis. However, due to space constraints, I must set these issues aside for future work.

<sup>10</sup> UNESCO's Constitution, for instance, states that “since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed; peace must therefore be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind” (UNESCO 1945).

seem to suggest a slightly different understanding of the concept of culture and, in turn, points to a different list of objects of cultural heritage associated with it. On the one hand, UNESCO often refers to culture as something that has a distinctly unifying dimension. Culture, under this usage of the term, is something that we all share insofar as we belong to *humanity*, and, as such, culture promotes “intellectual and moral solidarity of mankind” (UNESCO 1946). In what follows I will refer to this model of culture (and the resulting understanding of cultural heritage) in UNESCO’s work as *universalist*. The second broad role that culture plays in UNESCO’s project is that of ensuring respect for difference. The idea behind this seems to be that a wider understanding of the various characteristics of the distinct world cultures is to promote tolerance and appreciation for diversity. In this respect, culture is broadly understood as *difference*, i.e., “those symbolic acts which demarcate boundaries between groups” (Eriksen 2001, 132). I will henceforth refer to this model of culture (and the resulting conception of cultural heritage) as *particularist*.

While promotion of diversity and the solidarity of humanity are the two goals inscribed in UNESCO’s founding constitution, the two above mentioned conceptions of culture that respond to these goals for a long time have not been concurrent. From late 1940s to early 1960s, the dominant conception of culture in UNESCO’s documents was that of the universal culture of *humanity*.

The universalist notion of culture has particularly robust undertones of Enlightenment ideals, such as cosmopolitanism and progress.<sup>11</sup> As Sluga notes, [i]n the first few years of UN’s operation, delegates and functionaries portrayed [cosmopolitanism] as the path to permanent world peace, and as a necessary step in the evolution of mankind from tribes to nations, from

---

<sup>11</sup> It is commonly noted that the concepts of culture and cultural heritage, as they are understood by UNESCO, are deeply rooted in modernity—more precisely, in the events, ideologies and intellectual debates of the late 18<sup>th</sup> and 19<sup>th</sup> centuries (Eriksen 2001). A frequently cited influence of this kind is the work and the ideological foundation of the *Commission temporaire des arts*, the French Revolution initiative set to catalogue and protect the various monuments that were harmed during the Revolution. Another commonly mentioned factor that influenced the contemporary understanding of the concept of cultural heritage is the debate between John Ruskin and G. G. Scott (and later William Morris) with regards to conservation principles of ancient monuments. For an extended discussion of this debate see (Glendinning 2013, 121-130)

national consciousness to “One World”. [...] At [...] UNESCO world citizenship was celebrated as the adjunct of an antichauvinist *raison d'être* and as a cultural manifestation of Enlightenment premise that humanity was evolving socially, politically, technologically, and even psychologically toward a “World Community”. (Sluga 2010, 393)

Julian Huxley, the first director-general of UNESCO, envisioned UNESCO's goal as being a creation “of a single world culture, with its own philosophy and background of ideas, and with its own broad purpose” (Huxley 1946, 61). Such purpose was precisely to usher in an era of cosmopolitanism, unity, and equality of all, likely at least in part as a response to the atrocities that nationalist divisions brought on during the Second World War and the decades that preceded it. Culture and cultural heritage had an important role to play in this project as a means to secure this vision of cosmopolitan citizenship. By showing that we all ultimately belong to the same cultural group, through our shared cultural history, and all have something to contribute to the general culture of humanity, the universalist paradigm is meant to ground an identity of a citizen of the World.

Culture under the universalist model is understood as a canon of the greatest material works of arts (Nielsen 2011, 276) such as architectural landmarks, paintings, and literary masterpieces—of great aesthetic, historic or scientific significance.<sup>12</sup> In other words, culture captures the most robust manifestations of human genius, innovation, and progress. And by capturing all the best that has been thought and said by human beings, it is meant to be a testament to the potential of humanity and this way work as a unifying force. This conception treats culture as the common heritage of *all* those seen as members of humanity.<sup>13</sup> UNESCO and its signatory states' assumed role is to educate on

---

<sup>12</sup> Two characteristic examples of this understanding of culture are the Hague Convention (UNESCO 1954) and UNESCO Recommendation regarding Illicit Transfer of Cultural Objects (UNESCO 1964).

<sup>13</sup> See, for example, the introduction to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, whose dissemination and the monitoring of compliance UNESCO is responsible for: “Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people make its contribution to culture of the world; Considering that the preservation of the cultural heritage is of great importance for all peoples

these common roots by way of preserving heritage, granting access to it, and explaining its relevance and, through this, foster unity and peace.

However, such an exclusively cosmopolitan vision of UNESCO's purpose was not long lasting. There were at least two reasons for this. The first one is explicitly political. UNESCO's genuinely novel attempt at cosmopolitan internationalism was increasingly seen by more powerful governments as a threat to national sovereignty (Sluga 2010, 417). The United States wanted the UN to make it clear that "the promotion of international understanding did not mean support of world government" (ibid.). In 1952, Jaime Torres Bodet, Huxley's successor as director-general of UNESCO, explicitly notes that:

It has never been the purpose of UNESCO to turn citizens from their national loyalties. We are trying to do something quite different: to train citizens—since we are concerned with education—who will be faithful in their duty to their own country, and who, for that very reason, will also be loyal to their international obligations which their country has assumed. (Bodet, quoted in Sluga, ibid.)

The second reason for the turn away from cosmopolitanism concerns not so much the idea of cosmopolitanism itself, but rather what is understood as its content. As Sluga observes, already by the late 1940s, some observers were concerned that UNESCO's vision of cosmopolitanism reflected imperialistic and ethnocentric goals rather than a genuine commitment to a notion of one-world citizenship (ibid. 414-415).<sup>14</sup> Such cosmopolitanism, at the very least, would require treating each culture, all other things being equal, as an equally capable and valuable contributor to the "culture of the world". It is important not to downplay UNESCO's efforts to combat the deeply damaging effects of eurocentrism and the assumed European civilizational superiority. In many respects the organization came into existence as a response to the atrocities of the

---

of the world and that it is important that this heritage should receive international protection" (UNESCO 1954).

<sup>14</sup> Stephen Spender, an English poet and a friend of Huxley's personally recruited to UNESCO, sarcastically portrayed Huxley's assumed role at UNESCO as having "rather the air of the hero of a play which takes place in a house situated in the tropics—the white man in the midst of nature struggling to put in order a world of jungles to be cleared." (quoted in Sluga, ibid. 415.)

World War II that were founded, at least in part, on the assumed exceptionalism of one group over others. But to a significant extent UNESCO's efforts here may still have been laced with a colonialist mentality that sees the various non-western communities as inferior and in need of help from the more "mature" Western nations. The role of countries like Britain and France was to "civilize" the other groups, by, among other things, educating them about and encouraging them to take up Western culture and its values. Nowhere is this as well reflected as in the attitudes of Huxley, who envisioned the British Empire as a vehicle of evolution toward ever-enlarged political communities comprised of a "partnership" in which the "white race", in its "next and final phase of white expansion" assisted this "development of the world's backward and undeveloped regions, of which the colonies are an important section. (ibid. 408).

Similarly, while UNESCO and the UN sought to elevate representation of the subaltern communities through its offices and forums (ibid., 404), the overall lack of regional representation in its early days is astounding. In 1947, out of 557 posts in the secretariat, 514 were held by French or English nationals (ibid., 415).

This started to change around the 1960s. With decolonization well underway, there was a significant increase in the number of UNESCO signatory states – in 1950 UNESCO had 59 member states, while by 1965 the number grew to 120, and to 153 in 1980 (Nielsen, ibid. 276). This increase in member states and the following increase in representation coupled with the political and social upheavals of the 1970s onwards that "entwined the processes of decolonization with movements for civil, racial, ethnic and Indigenous rights" (Silberman 2012, 248) resulted in a significantly broadened understanding of culture and, importantly, what is valuable (and, hence, worth preserving) about it. There was a tendency to view Huxley's vision of the universalist World-culture as presenting cosmopolitanism as essentially a commitment to an elitist Western culture. As Chow notes, "in the statement adopted by the 1968 UNESCO Conference of Experts on Cultural Rights, it was observed that there is a 'growing consensus to define culture in non-Elitist terms [and] a new recognition of the diversity of cultural values, artefacts, and forms, where culture was no longer considered the 'prerogative of the few'." (2014, 619). Considering this, the exclusively universalist picture of culture slowly began to be amended by a turn to particularist one, which defines culture very broadly as encompassing any manifestation of a "collective expression of [a cultural group's] identity" (Silberman 2012, 248). So, the particularist

model no longer sees culture as merely the canon of humanity's greatest artistic and scientific achievements, but as a much broader category that encompasses a vast array of human activities spanning from artworks to ways of life.<sup>15</sup>

Importantly, this understanding of culture no longer implies that culture is an achievement of the “civilized”. To the contrary, according to this understanding, culture is something that all human beings have simply in virtue of belonging to a certain community that can be characterized by a definitive set of historically embedded and repeated creative activities. The role of UNESCO, among other things, is to preserve the diversity of cultures by preserving the heritage of said cultures, to educate people on the differences involved and their importance (UNESCO 2001b).

It is important not to draw a false dilemma between the universalist and particularist models of culture. It is perfectly plausible that the two models simply point to different dimensions of what is valuable about culture and, ultimately, cultural artifacts. The universalist model primarily focuses on historical cultural objects that are seen as particularly valuable for humanity at large, while the particularist model restricts its focus on concrete, smaller-scale communities, and their idiosyncratic cultures, expanding the notion of culture to a much broader category, encompassing such communities' histories and ways of life.<sup>16</sup> My intention here was not to suggest that the particularist model of culture has entirely replaced the universalist one in UNESCO's current work, but rather to point out that both the concept of culture and its use have been broadened and otherwise enriched through the years of UNESCO's operation and inquire into the reasons of why this might have happened.

---

<sup>15</sup> A commonly cited definition of culture at the time was that provided by Edward Burnett Tylor in *Primitive Culture*: “Culture [...] is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a *member of society*.” (Tylor 1871, ch. 1, emphasis mine)

<sup>16</sup> While the contents of the universalist model may have historically suffered from a Eurocentric bias, this does not mean that the model itself is inherently flawed or Eurocentric. The fact that the universalist model is alive and well in UNESCO's current work is evident from UNESCO's work on the World Heritage List—one of the organization's flagship programmes meant to preserve the material and natural cultural heritage of humanity.



### 1.3 Universalist and particularist models of cultural heritage

I now turn to the question of what specific conceptions of cultural heritage are implied by the models of culture discussed above. In what follows I will refer to the two conceptions of cultural heritage that we may find in UNESCO's work by the names of the models of culture that underwrite them; hence, the following is a discussion of the universalist and the particularist understandings of cultural heritage.

I will present the mentioned conceptions of heritage by comparing them along the following three dimensions, which are frequently mentioned in the documents where cultural heritage is concerned: (i) type of object, (ii) type of value, who values and who determines the value, (iii) views on authenticity. While these dimensions taken together are not exhaustive characterizations of cultural heritage, they give us a good initial approximation. This is briefly summarized by the following chart:

	<b>Universalist</b>	<b>Particularist</b>
<i>Types of objects</i>	For the most part tangible objects of exceptional artistic, historical, or scientific significance: ancient monuments, works of art, etc.	Tangible and intangible objects that are relevant to particular communities' identities: from material artwork to ritual, folklore, language, etc.
<i>Type of value, who values, and who determines the value</i>	Scientific/aesthetic/historical, humanity, set of experts,	Political/economic/religious/ide ntitarian, particular collectives, communities
<i>Views on authenticity, state of cultural heritage</i>	Static	Dynamic

The objects of cultural heritage under the universalist model are restricted to material manifestations of culture.<sup>17</sup> The Hague Convention, for instance, defines objects of cultural heritage in the following fashion:

movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above. (UNESCO 1954)

Similarly, UNESCO World Heritage Convention defines cultural heritage as, among other things:

*Monuments:* architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

*Groups of buildings:* groups of separate or connected buildings which, because of their architecture, their homogeneity, or their place in the landscape, are of outstanding universal value from the point of view of history, art or science (UNESCO 1972)

Particularist understandings of cultural heritage will encompass a much broader set of objects. Importantly, particularist cultural heritage is not restricted to material objects alone, but will seek to incorporate the various intangible entities of both Western and non-Western cultures, including:

Oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe, [and] knowledge and skills to produce traditional crafts. (UNESCO 2003a)

---

<sup>17</sup> There is no principled reason here to exclude intangible cultural heritage of universal value, but for the most part the universalist model of cultural heritage, as it appears in UNESCO's work, is concerned with tangible objects, which is why I have singled them out here.

The Deschambault Declaration<sup>18</sup> refers to cultural heritage in an even broader fashion:

[Among other things, heritage] includes *all* material environment in which we live. [...] And let us note, finally, that the people in their environment, who have their own customs and traditions, whose memory is furnished with a particular folklore, and whose way of living is adapted to this specific setting, are a human and social treasure that also requires protection. [...] The broad definition of our national heritage includes, then, all the elements of our civilization, as they exist not only individually but also as components of larger historical, cultural and traditional unities or, to put it in simpler terms, as examples of man's adaption to his environment. (ICOMOS 1982)

The second dimension—i.e., the type of value—concerns the particular way in which the object(s) of heritage is said to be significant. As the discussion of the universalist model of culture above suggests, the universalist puts highest value on material cultural objects that, in virtue of their great aesthetic, scientific and historical significance, best capture the ethos of humanity.<sup>19</sup> Which objects will best reflect this is to be determined by a set of expert scholars who evaluate them in accordance with a strict set of pre-specified aesthetic and historic criteria.<sup>20</sup> Hence criteria for the cultural object's value are determined entirely by the community of historians and social scientists.

The particularist, on the other hand, while also potentially recognizing the more abstract aesthetic, historical, and scientific importance of the object concerned, will characteristically argue that even in the absence of well-recognized features of this kind, a particular piece of cultural heritage could nevertheless be valuable and worthy of preservation. This is the case because what makes cultural heritage valuable, according to the particularist, is determined by its ability to facilitate the shaping of the identities of

---

<sup>18</sup> The Deschambault Declaration was drafted by the International Council on Monuments and Sites (ICOMOS). While ICOMOS is independent of UNESCO—ICOMOS is one of UNESCO's advisory bodies—the models of cultural heritage in both institutions' work seem to be, for the most part, shared.

<sup>19</sup> For example, see (UNESCO 1964).

<sup>20</sup> See (ICOMOS 1964) and (UNESCO 1972).

the group(s) with which the heritage in question is associated.<sup>21</sup> Because heritage has the potential to influence identities in numerous ways, its value, instead of being restricted to merely aesthetic, scientific and historic terms, is broadened to encompass social, religious, political and economic considerations, to name only a few.<sup>22</sup> Crucially, these values, according to the particularist, are never fully accessible to a set of UNESCO mandated scholars; hence, their determination ought to be left to the communities associated with the heritage.

The last dimension refers to the attitudes that preservationists belonging to each of the models of cultural heritage have with regards to the authenticity of cultural heritage. Authenticity is a quality that is central to each of the models; however, it is approached in different ways. These differences are informed in part by a differing understanding of whether the objects of cultural heritage can change over time without losing their value. As was hinted at above, the universalist model treats cultural heritage as a collection of the most valuable material objects of the past, and what is valuable about these objects, among other things, is that they reflect progress, innovation, and other broad achievements of humanity through the passage of history. To protect such objects properly and to ensure that they retain their authenticity, we must ensure that they are preserved in a form that is as faithful to their original state as possible, as it is their place and form in history that is relevant to the universalist.

The particularist model departs from this picture dramatically. While the universalist model of cultural heritage seeks to *protect* heritage from change, the particularist approach could be presented as *managing change* (Araoz 2013, 152). Characteristic to a particularist conception of cultural heritage is the claim that cultural heritage is a dynamic, as opposed to static, process, “whose very essence relies on its need to constantly change” (ibid.).<sup>23</sup> Recall that the value of cultural heritage under the particularist model is closely associated with its ability to shape collective identities; however, identity, by its very nature, is fluid and ever-changing. It is, therefore, reasonable to expect the way cultural heritage relates to identities to be dynamic as well.

---

<sup>21</sup> See (Shaheed 2011).

<sup>22</sup> See, for instance, the (ICOMOS 2013).

<sup>23</sup> See (ICOMOS 1994)

This, in turn, informs the content of cultural heritage itself, turning it into a set of objects that can change along with the collectives with which it is associated.

#### **1.4 Conclusion: Human rights and the two models of cultural heritage**

As I noted above, the universalist and particularist models of cultural heritage are associated with distinct models of cultural heritage preservation. The universalist will generally treat cultural heritage as something that is worth preserving for “its historical value for humanity, its uniqueness and non-renewable character” (Donders 2019, 381), while the particularist will base the protection of cultural heritage, as it is understood by the particularist model of heritage, in its “value for peoples and individuals in relation to the (re)construction of their cultural identity” (ibid.).<sup>24</sup>

The human rights approach to cultural heritage preservation in the work of UN and UNESCO most readily connects with the particularist model of cultural heritage.

---

<sup>24</sup> While both models and rationales that they provide for cultural heritage protection coexist in UNESCO’s current work, in UNESCO’s most recent documents we can note a slight shift in rhetoric from primarily preserving cultural heritage for all of humanity to the communities concerned with it (Donders, ibid.) and with this a turn to more attention to the particularist model of cultural heritage. We can note this shift by looking at the following three Cultural Heritage Conventions that are adopted by UNESCO member states: The Convention concerning the Protection of the World Cultural and Natural Heritage (UNESCO 1972); The Convention on the Protection of the Underwater Cultural Heritage (UNESCO 2001a); and the Convention on the Safeguarding of the Intangible Cultural Heritage (UNESCO 2003a) (Donders 2019, 6). Both the World Heritage and the Underwater Cultural Heritage Conventions put a strong emphasis on cultural heritage as something that is associated with all of humanity and that such heritage should be preserved for its historic, scientific, and aesthetic value for humanity. For instance, the Convention on Underwater Cultural Heritage underscores in its preamble “that underwater cultural heritage is an integral part of the cultural heritage of humanity ‘and a particularly important element in the history of peoples, nations, and their relations with each other concerning their common heritage” (UNESCO 2001a) It is in the Convention on Intangible Cultural Heritage that we see the most evident shift towards the particularist model. As Donders (ibid., 8) observes, it explicitly links what is understood as cultural heritage and cultural identity:

Art. 2(1): intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity. (UNESCO 2003a)

Consider the preamble of the UNESCO Declaration on the Intentional Destruction of Cultural Heritage, which (as Donders (2019, 10) observes) explicitly connects the particularist model of cultural heritage, along with its emphasis on identity, with dignity and human rights:

Cultural heritage is an important component of the cultural identity of communities, groups, and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights. (UNESCO 2003b)

There is famously no explicit reference to a human right to cultural heritage in the International Bill of Human Rights. However, it is traditionally assumed to fall under a human right to culture. While, as Donders observes, the drafting processes of instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—instruments containing a human right to *culture*—clearly indicate that the drafters had a conception of both culture and cultural heritage, as part of culture, that is more akin to the universalist model, this has changed significantly during the last several decades and now is something much closer to the particularist model (Donders 2019, 14). In 2009, the Committee on Economic, Social and Cultural Rights issued the General Comment 21 on the human right to culture in which culture, and cultural heritage as an integral part of culture, is defined in broad particularist terms, with reference to communal identity and individual and communal well-being.<sup>25</sup>

I do not mean to suggest that we cannot provide a plausible foundation for a human right to cultural heritage, as it is understood by the universalist model. Nor do I wish to argue that the universalist and particularist approaches to a human right to cultural heritage would necessarily be mutually exclusive. It seems to me that they could

---

<sup>25</sup> “Inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production of technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals express their humanity and the meaning they give to their existence, and build their worldview representing their encounter with the external forces affecting their lives. Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.” (CESCR 2009)

be as compatible as the models themselves. Instead of arguing that one is superior to the other, we may simply treat them as complementary in revealing different objects of a human right to cultural heritage. UDHR's Article 27 and ICESR's Article 15 invocations of a right to take part in cultural life are somewhat ambiguous because the scope of the community whose cultural life is being referenced there is not clear. The particularist model of cultural heritage restricts such communities to discrete cultural groups, such as nations, indigenous collectives and alike, while the universalist model suggests that such a community is that of humanity. While it seems that the general received interpretation of these articles is the particularist one, there is precedent in interpreting a human right to culture, as far as the scope of the collective is concerned, in universalist terms. For instance, Boutros Boutros-Ghali, former UN Secretary General, and ex-member of the Expert Committee on Cultural Rights, defines the right to have access to culture as a right to, among other things, cultural heritage understood in universalist terms:

[every person's right] of access to knowledge, to the arts and literature of *all peoples*, to take part in scientific advancement and to enjoy its benefits, to make his contribution towards the enrichment of cultural life. (Boutros-Ghali, quoted in (Chow 2014, 612))

However, I must set aside questions about the foundations of a human right to cultural heritage understood in universalist terms for future work. While I think that some of the foundational work that I do in the following chapters could extend rather straightforwardly to the universalist picture of cultural heritage, a sufficiently careful treatment of the rights that this model of cultural heritage would generate is well beyond the scope of this thesis.

In the next chapter I present an account of culture that, while guided by the characteristics of the particularist model of cultural heritage, seeks to understand its workings at a deeper level. I have noted before that the definitive feature of the particularist model of culture is its reference to collective identity—more precisely, that cultural objects, and culture as their sum, are reflections of a group's collective identity. This connection between culture and identity, both individual and collective, will help guide my investigation into the normative foundations for a human right to cultural heritage, but more needs to be said about how culture and cultural heritage interact with our identities before we can properly proceed. At least two questions need to be answered: (i) how precisely does culture and cultural heritage inform our identities? (ii)

why is cultural heritage, through its connection to our identities, important enough to generate human rights? To answer the first question, we need to have a better sense of what precisely culture is and how it functions, beyond simply being a “collective expression of a group’s identity”. In the next chapter I do this by providing an account of cultural heritage that takes inspiration from Ernst Cassirer’s philosophy of culture. Briefly put, according to this account, cultural heritage is one of the central ways in which we make sense of both our external and internal worlds. The second question is the topic of part II of the thesis. My response to it relies on connecting cultural heritage, through its relevance to our identities, to normative agency, a well-established foundation for human rights.



# **Chapter 2:**

## **Cultural Heritage as a Symbolic Form**

### **2.1 Introduction**

An important ingredient for an account of a human right to cultural heritage is a more thorough investigation of what both culture and cultural heritage amount to. To understand better how and why cultural heritage significantly links up to both our communal and individual identities, we need to get a better sense of what culture is and how it functions. The chief purpose of this chapter is to inquire into these questions, with an eye to providing an account of culture and cultural heritage that can serve as (part of) a foundation for a human right to cultural heritage.

Recently there has been a notable tendency to shy away from systematic investigations of the concept of culture and this, coupled with the generally messy nature of the concept, is perhaps partly responsible for the lack of more concrete and substantial theoretical assumptions about the concept in policy work. Considering this, I begin the chapter with an assessment of several worries one may have regarding the concept of culture. I ultimately argue that none of the three worries that I address here are successful in showing that the concept of culture or inquiry into it should be abandoned. But they do reveal important ways in which the concept has been misapplied and otherwise misused. Therefore, I instead use these worries to formulate desiderata for a successful account of culture. I then provide a novel account of cultural heritage that meets all three of these desiderata and that is inspired by Ernst Cassirer's philosophical anthropology and his philosophy of culture. In the following chapters I will proceed to use this this account of cultural heritage as a starting point for my account of a human right to cultural heritage.

### **2.2 Desiderata for the concept of culture**

The concept of culture is a contested one, and before we begin a more careful exploration of it, it is worth briefly addressing a set of worries that one may have

concerning its legitimacy and how such worries may relate to the ensuing understanding of cultural heritage.<sup>26</sup> More precisely, the following discussion centres around three of the most common types of criticism concerning the concept of culture: (i) issues having to do with scope of the concept, (ii) concerns about the supposed homogeneity of the concept, and finally (iii) worries relating to exclusionary tendencies that some discourses on culture may entail. While each of these critical points ought to be taken very seriously, I argue that none of them provides strong enough reason to banish the concept altogether. I think that these criticisms accurately illustrate ways in which the concept has been abused and, hence, provide insight into how *not* to theorize about culture. But none of them provides sufficient grounds to believe that the *concept* of culture is inherently flawed. Considering this, I suggest that we look at these criticisms as informing a set of desiderata that our concept of culture and the related concept of cultural heritage ought to follow.

### **2.2.1 Scope**

A common concern regarding the concept of culture is that the concept of culture is so broad and contested that it lacks explanatory power and usefulness more generally. Owing to the large number of understandings of the term “culture” and the concept’s broad applicability in both academic and non-academic contexts, the concept can now encompass virtually *all* human activity, from individual modes of action to politics and alike (ibid.). And given that the list is so large and the objects comprising it are so diverse it becomes difficult to find something that would appropriately characterize and unify each of these objects without simplifying them. To accommodate this, culture becomes an extremely vague and plastic term, so much so that it comes close to not having much content at all. To avoid such vagueness, the critic argues that we ought to discard reference to the concept of culture itself and directly talk about the

---

<sup>26</sup> Adam Kuper in *Culture: The Anthropologists’ Account* provides a critical analysis of culture, both as a term and concept. More precisely, his aim in the book is to critically examine the concept of culture and inquire into its value as an analytical concept. The conclusion of Kuper’s study is that we should “avoid the hyper-referential word [‘culture’] altogether, and to talk more precisely of knowledge, or belief, or art, or technology, or tradition, or even ideology” (1999, x). Although I disagree with Kuper’s central conclusion, the sections in which I address the desiderata for the concept of culture are indebted to his critical insights.

concrete manifestation of the concept that we wish to address (such as concrete modes of action or politics). This way, by avoiding the invocation of an overly obscure concept, we do not risk forwarding confusion and misunderstanding (Kuper 1999, x).

If this worry is convincing, much of the same can be said about the concept of cultural heritage, and, to a large extent, such worries are derivable from scope concerns of the concept of culture. Simply put, if we consider cultural heritage to be some set of significant cultural objects and practices of our past, then the longer the list of things that fall under the concept of culture is, the longer is the list of what falls under cultural heritage. More specifically, as discussed in the previous chapter, the views on the appropriate contents of the concept of cultural heritage have gone through significant change during the past eighty years, both in academic work and in policy making. And while there are perhaps fewer competing theories (and hence less controversy) over the best way to conceptualize cultural heritage, there is no shortage of debate over *what* precisely could be appropriately considered cultural heritage. For instance, as we have seen, the concept has become significantly broader with the introduction of the particularist paradigm. According to the particularist, virtually any cultural object, be it tangible or intangible, that can be considered a marker of communal identity (so long as relevant temporal conditions are met), could be considered to be cultural heritage.<sup>27</sup> Given this, we may provide the following criticism to the use of the concept of cultural heritage analogous to the scope issues for the concept of culture: the concept of cultural heritage encompasses too large a set of entities and to avoid confusion we should simply start referring to particular instances of heritage, instead of invoking the concept more generally.

Should such worries convince us to abandon the concept of culture and, potentially, cultural heritage? I think not. The scope concern seems to rely on an assumption that the concept of culture is exhausted by the sum of its parts. It is in virtue of this that the critic can propose as a solution to the problem of scope and vagueness that we simply refer to the various concrete manifestations of culture rather than invoke the concept itself. There are two distinct worries one may have about this strategy. First,

---

<sup>27</sup> Cultural heritage, according to the particularist, encompasses almost all historical cultural objects, ranging from material historical artifacts to every-day customs of a given community, such as food and clothing preferences.

to what extent it is the case that culture indeed is exhausted by a list of its instances is an open and complicated question and, hence, one that requires more analysis before one could endorse the proposed conclusion.<sup>28</sup> Furthermore, if we just focus on the concrete instances of culture, there is a danger that we will no longer be able to do the required philosophical work. The danger of this type of particularism is that we will end up describing the cases rather than explaining them. It seems plausible to require that to be able to properly explain them we need to have some higher-level, concrete-phenomena-independent characterization of what culture is and how it works.

Finally, it is important to note that scope worries having to do with both culture and cultural heritage have little to do with the concept of culture and heritage themselves and rather seem to deal more closely with the way these concepts are misused and the potential confusion that may ensue given such misuse. This will turn out to be a shared theme in all the worries addressed in the desiderata section. What this suggests is that none of the objections addressed here in themselves have the means to show that the *concept* of culture is a priori flawed and, in virtue of this, ought to be discarded, but rather that we should be cautious in how we construe and use it. This is by no means to suggest that such worries ought not be taken seriously. We should rather take them as signposts for a philosophical theory of culture and the resulting account of cultural heritage: a successful theory of culture or cultural heritage must be able to address them.

The scope concern then can be translated into the following desideratum: our theory of culture must have the means to provide a clear set of criteria for something to be considered as the concept of culture and for an object to be a manifestation of said concept. This desideratum is crucial not only for us to avoid general confusion stemming from vagueness and broadness of the term, but also to have a clearer picture of what a

---

<sup>28</sup> T. S. Eliot was famously critical of viewing the concept of “culture” as exhausted by the objects that underwrite it: “By ‘culture’, then, I mean first of all what the anthropologists mean: the way of life a particular people living together in one place. That culture is made visible in their arts, in their social system, in their habits and customs, in their religion. But these things added together do not constitute the culture, though we often speak for convenience as if they did. These things are simply the parts into which culture can be anatomized, as a human body can. But just as a man is something more than just an assemblage of the various parts of his body, so is culture more than the assemblage of its arts, customs, and religious beliefs. These things all act upon each other and fully to understand one you have to understand them all.” (quoted in (Luft 2015, 1)).

human right to cultural heritage would look like. Simply put, without a more concrete picture of what distinguishes objects of cultural heritage it is difficult to see how we could have a plausible account of a human right to cultural heritage. This is of course not to say that, if this desideratum is taken into consideration, the list of objects that we will consider to be cultural heritage (or objects that will fall under the concept of “culture” more broadly) is necessarily going to be much restricted. The list of criteria according to which an object ought to be considered as cultural heritage may turn out to result in a vast range of objects, but what is important to us is that it is clear why each of those objects is on the list. It seems that once work has been done to explain the nature of culture and cultural heritage, the purpose of those concepts and the criteria for their application, to further insist that such concepts are pointless because they cover too much is as useful as to say that the concepts of “representation” and “value” are useless because they too cover a large scope of vastly different phenomena.

Indeed, I will be proposing a fairly broad account of culture that, in turn, will yield a long list of historical cultural artefacts and other instances of heritage. All instances of culture, under the understanding of the concept that I will be proposing, do have a common core, so the worry that the concept is too chaotic and vague in its content need not arise. However, the length of this list of instances of culture and, correspondingly, heritage might still strike one as worrying. And this worry, if not appropriately addressed, may have significant ramifications for a human right to cultural heritage. More precisely, if cultural heritage, by way of being an instance of culture, indeed becomes something that encompasses almost all human activity, then the list of objects to which we might have a human right may become unmanageably long and, perhaps more importantly, include objects that one might otherwise consider to be quite mundane and otherwise morally insignificant.

Consider activities such as trainspotting, stamp-collecting, playing vintage video games, shopping at one’s favourite market, and so on. These all seem to uncontroversially be cultural activities, once culture is defined in the broad sense that we have referred to above. In their various differing forms, they may be specific to a certain non-arbitrary group of people; and they may all have a relevant history that makes them an instance of cultural heritage. They may even be extremely important to us, in the sense that we would be much less happy if we no longer had a chance to perform them. However, to say that we therefore have a human right to playing vintage video games,

collecting stamps or shopping at our favourite market may seem a little odd. Not having access to them just does not seem to command as much urgency as being tortured or not having access to clean water or shelter.

Indeed, not all instances of cultural heritage are going to compel us enough to conceptualize (some of the) obligations that are involved in preserving them as human rights. I think it is rather implausible, both pragmatically and conceptually, to assume otherwise. And this is the case precisely because the list of objects that can be credibly put under the label “heritage” is just too vast, and states and other local and international entities that are tasked with safeguarding such rights will likely not have enough resources to do so. But even if resources were not such a pressing issue, it seems reasonable to require that for something to be considered an object of a human right it needs to be of central importance to us, something without access to which we are truly and deeply harmed. Not all our heritage is going to meet this criterion, and, to determine which of it does, we need to have a better understanding of what precisely heritage is and why it is valuable to us. I address both questions in what follows, focusing on the first mainly in this chapter and the second in the following ones.

### ***2.2.2 Stasis and homogeneity***

The second set of worries commonly raised with regards to the concept of culture has to do with the nature of theorizing about culture. As Kuper puts it, the very attempt to conceptualize culture as a system may be at danger of conveying an illusionary homogeneity, stability, and internal consistency (Kuper 1999, 246). In “Who Owns the Past” Richard Handler criticises such approaches as a common failing of contemporary anthropology. According to such approaches:

The nation is said to “have” or “possess” a culture, just as its human constituents are described as “bearers” of the national culture. From the nationalist perspective, the relationship between nation and culture should be characterized by originality and authenticity. Cultural traits that come from the outside are at best “borrowed” and at worst polluting; by contrast, those aspects [...] that comes from within the nation, that are original to it, are “authentic.” (Handler 1991, 66)

But the trouble with this type of theorizing about culture is that this approach seems to rest on an assumption that culture is a homogenous and unchanging entity that is somehow necessarily characteristic of all members of the group who belong to that culture. All the influences and cultural expressions that come from outside of a given culture then become things that are somehow tainting it and making it less “authentic”. As Handler notes, “it is more fruitful to think of cultures and groups as being continually reconstructed, realigned, and re-imagined, as various actors negotiate their social lives... [C]ultures are not things exhibiting oneness over time.” (ibid., 68).

In other words, employing the concept of culture can have homogenizing tendencies, in that culture is presented as overly uniform and can result in simplifying the experiences and cultural expressions of various communities. But perhaps the deepest harm here lies in the threat of essentialization. More precisely, because culture is presented as a unique and, for the most part, self-standing system, this approach to theorizing about the concept requires that we draw very strict boundaries between cultures, that determine where one is supposed to begin and the other one to end. This in turn means having to establish who belongs to a certain group and who does not, that is, establishing cultural “insiders” and “outsiders” (Matthes 2016, 346), which more often than not leads to harmful exclusion and essentialisation.

The harms of essentialism are well-established.<sup>29</sup> Cultural essentialism tends to “imprison” people in the cultures with which they associate themselves (e.g., my voluntary association with being Lithuanian) or are involuntarily associated with (e.g., someone assuming that a person belongs to some cultural group just in virtue of their physical features or accent). In this sense, essentialist generalizations tend to replace the rich plurality of ways of life of members of a given cultural group with a simplified narrative of cultural belonging. By doing so, essentialism often fails to adequately characterize the group, leaving out members who self-identify as belonging to said group, “or who do not fit the typical mould, as well as “reification” of group criteria, which can stand in the way of “reconceptualizing or reinterpreting” dominant understanding of membership within the group” (ibid.). Not only is essentialism problematic in its own

---

<sup>29</sup> By “cultural essentialism” here I mean the claim that groups of people have a set of identifiable characteristics that are *necessarily* held by each member of that group.

right, but it can also reinforce toxic cultural divides (as in the case of racism, xenophobia, etc.), that tend to aid oppression in facilitating “othering” practices.

Much like in the case of scope concerns, the stasis and homogeneity worries transfer directly to cultural heritage, in large part due to the connection between the concept of culture and heritage. Often cultural heritage objects become the tools that facilitate homogeneous accounts of culture. Consider cases in which a cultural artifact that has a complex past that touches more than one group’s interests and histories is treated as a cultural artifact that can be rightfully associated with one group alone.<sup>30</sup> Or cases in which cultural heritage becomes a central marker of the authenticity of the group’s culture and, hence, to be considered a genuine member of a particular community, one then must partake in said heritage. Consider the lengths that some people descending from indigenous communities must go to establish the legitimacy of their ancestry, simply because they may not be partaking in what those outside their cultural group (or sometimes even those inside the cultural group) might perceive as important rituals.<sup>31</sup>

These worries are particularly pressing due to their troubling practical implications. Unlike the issues of scope, which, if correct, merely made the concept of culture confusing and uninformative, concerns about stasis and homogeneity would seem to show that the concept of culture contributes to injustice in the form of essentialization processes, among other things. Hence addressing them is an urgent matter. However, much as in the case of scope concerns, the worries outlined above need not threaten the concepts of culture or heritage themselves but rather place constraints on how those concepts should be used and theorised about.

---

<sup>30</sup> Consider Temple Mount/Haram esh-Sharif in Jerusalem and its position in both Judaic and Islamic canon. Kwame Anthony Appiah has persuasively argued that much of the artifacts that are considered to be the cultural heritage of Europe and, hence, belonging to Western culture, have nothing to do with it. In fact, the notion of “Western culture” as such is a modern invention. See (Appiah 2016)

<sup>31</sup> An illustration of this is mentioned by Matthes. He brings up the case of Adrienne Keene. Keene is a Native American activist, who has repeatedly had her identity questioned by both members of Native American communities and those outside them, “based on her skin colour and upbringing, despite being a person of Native American ancestry and an activist and scholar on various issues of concern to Native communities” (Matthes 2016, 356).



If we are careful to construct the concept of cultural heritage in such a way that the dynamic processes that underlie it (such as creolisation, cultural adaptation, and so on) are well and truly accommodated, the worry need not arise. In fact, getting clear on how culture and cultural heritage work when it comes to such processes can be a powerful tool to fight essentialisation and all its negative implications, as it gives us a clearer picture of how culture characterizes who we are and why cultural essentialism so badly misses the mark. But responsible theorizing about culture can only go so far in fighting essentialism of the form discussed here. Even if our theory has made the dynamism and flexibility of cultural processes and integral and necessary part of it, this will only do so much if the concept is misapplied in practice.

Frequently issues with cultural essentialism have nothing to do with the concepts of “culture” or “cultural heritage” themselves, at least the version of them that scholars have in mind. Instead, they have to do with how we apply the concept in practice and everything that we associate with its content in everyday interactions, such as those involved in our relationships with those who belong (or who we identify as belonging) to other cultural groups. The concepts of culture and heritage at play in such cases would seem to be “folk concepts” rather than the concepts used by theorists. Therefore, however nuanced and sensitive to dynamic processes our theorising about culture might be, essentialism may still persist in our folk conception of culture. But we should be careful not to conflate the former with the latter.

### ***2.2.3 Culture, elitism and exclusion***

The last set of worries relates the concept of culture to issues having to do with overt exclusion and marginalisation. According to this set of worries, there is something about the concept of culture that makes it a particularly good tool for facilitating exclusionary narratives, through its ability to erect hierarchical structures. As Lila Abu-Lughod notes, “culture operates in an anthropological discourse to enforce separations that inevitably carry a sense of hierarchy” (1991, 466).<sup>32</sup>

The claim that theorizing about culture leads to exclusionary practices is perhaps the oldest and most deeply rooted of the three concerns addressed above. Its sources can

---

<sup>32</sup> For similar positions see (Trouillot 2003) and (Michaels 1995).

be traced back to the first half of the twentieth century, when the dominant concern regarding exclusion was not so much about the general hierarchical divisions that it can sow but rather that it implies a form of elitism and high-brow aesthetics that then excludes all other cultural (or what we now consider as cultural) expression as insignificant. One of the most famous critics of the concept of culture in this vein was Martin Heidegger, who wrote on the issue throughout his career. According to Heidegger, the very term “culture” invokes an elitist “high culture”, which in itself is a form of inauthentic existence: “Culture is ruled by blind and unconcerned ‘busy-ness’ and its mechanized and technicized manner of functioning; [...] ‘culture’ is one name for this inauthentic existence that only a member of the high bourgeoisie [...] can appreciate” (Heidegger, quoted in Luft 2015, 210). As Luft notes, the Heideggerian stance toward culture permeates contemporary criticisms of the concept. The worry is not so much targeted to instances of the concept of “culture”, but rather towards abstract theorising about it. More precisely, setting up an abstract list of criteria for something to be considered culture, where such criteria are often seen as representing the worldview of those in power, is inevitably exclusionary (ibid.).

These worries, unsurprisingly, also carry over to cultural heritage. They are frequently raised with regards to UNESCO’s universalist model of cultural heritage and its most famous instance, the World Heritage List. The more precise concern is that it presents culture (at least the culture that designates that what is worthy to preserve) as a predominantly Western achievement that reflects corresponding Western ideals. As I have argued, under the universalist model, culture and cultural heritage are both viewed as a canon of the greatest material works of art (Nielsen 2011, 276)—such as architectural landmarks, paintings and literary masterpieces—of great aesthetic, historical or scientific significance. As Silberman puts it, cultural heritage is understood as a “rarefied concentration of highbrow aesthetic, creativity and self-evident social value that need[s] to be carefully protected and ‘presented’ to the public as a kind of cultural vitamin” (Silberman 2012, 247). But the practical list of objects of cultural heritage of universal value has been robustly dominated by cultural achievements associated with the Global North.<sup>33</sup> Therefore, the heritage that is identified as heritage of all humanity, is,

---

<sup>33</sup> As Victoria Reyes notes, as of 2014 “Italy and Spain had 114 of UNESCO’s 696 designated cultural sites; in comparison, 25 countries—including the Dominican Republic, Papua New Guinea, and

first and foremost, the heritage that embodies values that have traditionally been associated with the values of the Western world. This, in turn, is at risk of reinforcing a particular form of elitism and exclusion, according to which those in the West ought to be privileged due to superior cultural achievement. The problem here in large part stems from the use of culture as an evaluative term: to say that something is culture is to value it above the things that are “not-culture”. To largely restrict what counts as culture and cultural heritage to one group’s creations inevitably positions other groups as less valuable and, hence, inferior. The non-exclusion desideratum seeks to democratize the picture by broadening the scope of what is considered culture and cultural heritage and who are legitimate creators of such artifacts (and, in turn, participators in culture).<sup>34</sup>

The exclusion concerns have quite a bit in common with the worries about stasis and homogeneity addressed above. Most importantly, one of the central reasons why each set of concerns are pressing is because the very use of the concept of culture in the way the critics have outlined it, seems to lead to troubling practices that have real-life consequences for the communities about which we theorize. Worries such as simplification, essentialization and marginalization and exclusion are not unique to any of the one ways of theorizing about culture addressed above but are rather applicable to all three at once. But, as I have indicated above, it seems that neither of them disqualifies the concept of culture itself, but rather they function as an important set of desiderata that a responsible theory of culture and cultural heritage should follow.

---

Mongolia—have just one UNESCO cultural site each. Ireland, Saudi Arabia and 16 other countries have two each. Seven countries, among them Jamaica and Moldova, have no UNESCO-designated sites at all. [...] 31 percent of UNESCO-designated cultural sites not located in Italy were celebrated for their Italian influence, including 50 of Eastern Europe’s 79 designated sites. Another 23 Eastern European UNESCO sites boasted French influence. This means that all but six of Eastern Europe’s UNESCO-designated cultural monuments are celebrated for their Western Europeanness. Similarly, almost half of Latin America’s 77 cultural World Heritage sites are from the Spanish colonial era.” (Reyes 2019)

<sup>34</sup> In this sense, it can be seen as being in tension with the scope desideratum, which seeks to rein in the extension of the concept of culture. But this tension is on the surface only. As I have argued, the best reading of the scope desideratum is not that the list of objects that fall under the concept “culture” ought to be made artificially narrower, but rather that the conditions for something to be considered an instance of “culture” should be clear, this way allowing the extension of the concept to remain quite broad.

## 2.3 Culture and symbolic forms

### 2.3.1 Cassirer, the Marburg School and philosophy of culture

I now turn to an account of cultural heritage that I think has the resources to meet all the desiderata outlined above and, considering this, is a strong contender to ground a human right to cultural heritage. This account takes inspiration from the conception of culture as a system of symbolic forms found in the work of Ernst Cassirer. There is no shortage of theorizing about culture, especially in anthropological literature,<sup>35</sup> and reviewing all accounts of culture and their implications for the concept of cultural heritage could easily take up another thesis-length investigation. I leave this for future work and here rather use Cassirer's work as point of departure. But my choice to start from Cassirer is not arbitrary. It is in his work that we find one of the most worked out philosophical approaches to culture. Additionally, what makes Cassirer's work particularly well-suited for the present purposes is that his philosophical investigations of culture are in large part shaped by the concerns outlined above (especially the last one, that of culture's ability to work as an exclusionary force). Indeed, one of the goals of Cassirer's project is to establish an account of culture that would be able to encompass all our (creative) activity, not merely high-art achievements. In this sense, one of the goals of his philosophy of culture is to "reject the dated spectre of a problematic high culture" (Luft 2015, 210)

Cassirer's career starts in the context of the Marburg School of Neo-Kantianism, the definitive feature of which is the goal to present a transcendental philosophy of culture. The members of the Marburg school, among which were Herman Cohen and Paul Natorp, sought to transform the Kantian critique of reason into a critique of culture (Luft, *ibid.* 1). This philosophical direction of the Marburg school was prompted by a deep-rooted dissatisfaction with one of the foundational assumptions of Kantianism, namely that what makes us who we are, what is truly definitive of our humanity, is our rationality. This feature of Kantian thought remains controversial to this day and received no shortage of criticisms from both Kant's contemporaries and his successors.<sup>36</sup>

---

<sup>35</sup> See, among others, (Clifford and Marcus 1968), (Geertz 1973), (Parsons 1999) and (Sahlins 1976).

<sup>36</sup> This is especially evident in the literature of human rights foundations. See, e.g., (Tasioulas 2016).

The German romanticists famously saw in Kant's thought—and especially his characterization of the central tenets of our humanity—an epitome of their much-criticized Enlightenment ideal of disinterested reason. Due to its refusal to address the emotive aspect of our humanity, a philosophical anthropology that emphasizes reason alone, fails to characterize us fully and appropriately according to the romanticists (Skidelsky, quoted in Luft, *ibid.*).

In a similar vein, the members of the Marburg school also considered Kant's account of our humanity to be too restrictive. As Luft notes, the project of the philosophy of culture characteristic to the Marburg school was prompted by the recognition [...] that the human being is, while rational, not wholly captured in its rationality, and that likewise the space that we occupy as human beings is too narrowly construed as the space of reasons. Indeed, the space we inhabit is more appropriately called the *space of culture* and a philosophy of culture has this space as its topic of investigation. (*ibid.*, 3)

Therefore, the Kantian critique of reason becomes the critique of culture (Truwant 2018). This shift is motivated by a turn from a narrow characterization of one aspect of our humanity to a larger, more encompassing one.<sup>37</sup>

A direct implication of this account is that human beings are best understood not (only) as rational creatures, but as cultural ones. Characteristic of Cassirer's philosophical anthropology is the claim that no singular and substantial definition of a human being is possible. Much like in his account of culture, Cassirer is also sensitive to exclusionary tendencies in defining what it means to be human. A definition of a human being is only ever possible in a *functional* form, by pointing to activities that human beings do, i.e., by referring to culture. As Luft puts it, “a definition of a human being is only ever possible with a view towards the projects that we are engaged in, the contexts that we value and that give our lives meaning, all of which are forever evolving, dynamic, malleable, open-ended—and threatened by the forces from outside. There is no direct way to the human being, but only through the detour of culture” (*ibid.* 15), which is to say that culture is a

---

<sup>37</sup> For example, Cassirer writes: “Reason is a very inadequate term with which to comprehend the forms of man's cultural life in all their richness and variety. But all these forms are symbolic forms. Hence, instead of defining man as an *animal rationale*, we should define him as an *animal symbolicum*” (Cassirer 1944, 26).

central feature of what it means to be “human”.<sup>38</sup>

However, what exactly is culture, under the present account? Cassirer is famously silent on a formal definition of the concept, but this ought not surprise us much, given that one of the goals of his project is to give as inclusive an account of culture as possible and, in doing so, do justice to the complexity of the phenomenon. Giving a fully formal definition of culture that would name a list of cultural artifacts “will lapse into a master discourse [...] that gives the term a ‘substantial’ definition which is vulnerable to the charge of being exclusionary” (Luft, *ibid.*).

But this is not to say that Cassirer does no work in analysing the concept; however, his analysis of it is a rather broad one. Following the philosophical commitments of the Marburg School, Cassirer identifies the scope of culture to be inclusive of all human activity. All human action can be characterized as intentional and, hence, following a certain method, where such method is characterized by following a set of rules and regularities. What this method comes down to, according to Cassirer, is our ability to produce complex symbolic meanings (and systems of such meanings) that are communicable to other human beings. Human beings, therefore, can be characterized as “symbolic animals” who differ from other beings precisely in their ability to create, recognize and communicate symbols over and above mere sensory perceptions.<sup>39</sup>

---

<sup>38</sup> As Cassirer puts it: “Man’s outstanding characteristic, his distinguishing mark, is not his metaphysical or physical nature—but his work. It is this work, it is the system of human activities, which defines and determines the circle of ‘humanity’. Language, myth, religion, art, science, history are the constituents, the various sectors of the circle. A ‘philosophy of man’ would therefore be a philosophy which would give us insight into each of these human activities and which at the same time would enable us to understand them as an organic whole.” (Cassirer 1944, 68)

<sup>39</sup> Here one might raise the question whether it is truly the case that only human beings are able to use symbols in such a way. In *Essay on Man* (1944), Cassirer argues that animals indeed exhibit signs of intelligence and insight and one of the ways in which this is manifest is in their use of systemic signals, where such signals are understood primarily as physical signs (for example, vocal tones, body-language, etc.). However, signals differ from symbols. In addition to having the qualities that physical signs might have, they have a layer of complex meanings attached to them. They need not be associated with one particular content, but rather “prompt a range of freely creative responses in human knowers within distinct spheres of meaning”. Cassirer characterizes the distinction in the following fashion: “Symbols—in the proper sense of this term—cannot be reduced to mere signals. Signals and symbols belong to two different universes of discourse: a signal is a part of the physical world of being; a symbol is a part of the

Culture, then, is a set of our activities that are expressed by symbolic forms. The role of the philosopher of culture (i.e., the task of the philosophy of culture) is therefore to interrogate the core of human activity, by interrogating its method and the regularities that make it up. In other words, the role of the philosopher of culture is to analyse the symbolic forms that are at the foundation of human activity and, therefore, culture.

### ***2.3.2 Symbolic forms***

Symbolic forms can very broadly be defined as communicable distinct modes of meaning that are used to explain experiential input.<sup>40</sup> Without symbolic forms, according to Cassirer, meaningful experience of objects would be impossible: “Man lives with objects in so far as he lives with these forms; he reveals reality to himself, and himself to reality, in that he lets himself and the environment either into this plastic medium, in which the two do not merely make contact, but fuse with each other. [...] it is solely by [symbolic forms] that anything real becomes an object for intellectual comprehension, and as such is made visible to us” (Cassirer 1946, 10)

Amongst instances of symbolic forms are art, language, history, religion, myth, science, mathematics, etc. Objects can represent “any and all symbolic forms, and the form they take will depend on the form within which we are operating” (Marra 2015, 241). A famous example that Cassirer uses to illustrate this idea is that of a sensory

---

human world of meaning. Signals are ‘operators’; symbols are ‘designators’. Signals, even when understood and used as such, have nevertheless a sort of physical or substantial being; symbols have only functional value.” (Cassirer 1944, 32). Whether Cassirer is correct in holding this view largely depends on further empirical investigations into animal cognition and, regrettably, I have no space here to investigate this interesting and important question. For the purposes of this thesis, it suffices to consider our ability to represent the world in symbolic terms as characteristic of human beings, but not necessarily as unique to us.

<sup>40</sup> Cassirer defines symbolic forms in the following way: “By ‘symbolic form’ I mean that energy of the spirit through which a mental meaning-content is attaches to a sensual sign and inwardly dedicated to this sign. In this sense, language, the mythical-religious world, and the arts each present us with a particular symbolic form. For in them all we see the mark of the basic phenomenon, that our consciousness is not satisfied to simply receive impressions from the outside, but rather that it permeates each impressions a free activity of expression. In what we call the objective reality of things, we are thus confronted with a world of self-creating symbols” (Cassirer 1921, quoted in (Jensen 2012)).

experience of a curved line. A curved line, depending on the perspective of the symbolic form we judge it from, may be experienced in distinctly different ways. From the perspective of the symbolic form of geometry, a line could be “a quantitative relation between the two dimensions of the plane”, from the perspective of a work of art, it could be a “relationship between light and darkness, shape and contour” (Cassirer, quoted in (Jensen 2012)).

Importantly, according to Cassirer, none of these symbolic forms capture the one true essence of the object they are referring to (e.g., the line in our example above). This brings us to an important point about the purpose of the theory of symbolic forms. This theory does not seek to explain what the world really is, but rather to investigate how we as cognizers relate to it and what meaning we make of it. In addition to this, symbolic forms are not closed systems that, once established, are set in stone. On the contrary, they evolve over time, adapt to new experiences and changing environments that human beings find themselves in. Here Cassirer’s Kantian roots are at their most evident. His account of culture is commonly known as *symbolic idealism*, and it, to a large extent carries out the project of transcendental idealism, with several important modifications. Centrally, if one of the purposes of Kant’s transcendental idealism was to show how reason, manifested through synthetic a priori cognition, constitutes our experience of reality (and, in a qualified sense, the reality itself), then Cassirer’s account is meant to show how our understanding of reality is constituted through culture and, in turn, symbolic forms.

Before I turn to discuss how Cassirer’s account of culture can inform our understanding of cultural heritage, it is worth pausing to briefly reflect on how the symbolic forms account of culture fares with the three desiderata for the concept of culture addressed above. I have noted above that the third desideratum, i.e., that of non-exclusiveness, directly motivated Cassirer’s project. Culture in Cassirer’s work is an all-encompassing phenomenon, that *all* human beings participate in just in virtue of being human. In this respect, such an understanding of the concept could not be further from an exclusionary account, that would restrict culture to one group’s achievement (Western European) or one type of activity (high art or objects that manifest a certain level of “civilisation”).

Cassirer’s account of culture can also fairly uncontroversially meet the second desideratum, that requires our account of culture to be able to accommodate the



dynamic and flexible nature of cultural processes. Such dynamism is well accounted for by Cassirer's account of symbolic forms. By definition, symbolic forms are ever-changing, flexible and quick to adapt to different circumstances that human beings find themselves in. And given that culture, according to Cassirer, is simply a totality of symbolic forms, this results in an account of culture that presents the larger phenomenon as equally dynamic.

The final desideratum, that of scope concerns, arose from the worry that the concept of culture has become so vague and chaotic that it ceased to be contentful, and hence we should instead just refer to concrete instances of culture rather than invoke the concept itself. Indeed, Cassirer's understanding of culture is quite a broad one. As we have seen, according to him, virtually all meaningful human activity is cultural, as anything that involves meaning attribution is inherently linked to symbolic forms and, hence, to culture. However, such generality does not disqualify the concept of culture as uninformative or contentless. Despite being general and all-encompassing, the concept nevertheless establishes a clear (if general) list of criteria for something to be considered an instance of culture, hence the worry that it is too vague and unorganized need not arise.

## 2.4 Cultural heritage as symbolic form

Under this picture, culture is a symbolic system by which our understanding of reality is constituted. In this respect, culture, broadly understood, functions as a condition of making sense of the world, indeed something without which our understanding of the world would be impossible. However, culture does not operate in a vacuum. While the symbolic forms—such as myth, language, history—themselves are universal, the specific contents that they give rise to—concrete myths, particular linguistic systems, historical representations—are influenced by numerous contingencies, such as historical circumstances, social practices and other environmental factors that the various human communities find themselves in.<sup>41</sup> In this respect, there is significant

---

<sup>41</sup> However, some symbolic forms must yield universal content. Consider the symbolic form of arithmetic. Different cultural groups might be responsible for discovering or creating (depending on one's take on the nature of mathematics) concrete contents of arithmetic, but such contents hold true across all the distinct

variation between the distinct contents of the systems of symbolic forms of different groups. In light of this, Clifford Geertz, building on the work of Cassirer, famously defines culture as something applicable to a particular community, as “a historically transmitted pattern of meanings embodied in symbolic forms by means of which [people in a given community] communicate, perpetuate, and develop their knowledge about and attitudes towards life” (Geertz 1973, 89).

If culture is understood in these terms, what should we make of the concept of cultural heritage? Neither Cassirer nor any other symbolic systems theorist, to the best of my knowledge, has paid close attention to this question. Considering this, in the remaining part of the current chapter I will focus on a treatment of cultural heritage that takes inspiration from the symbolic forms account of culture. I propose to understand cultural heritage as, to use Cassirer’s language, a particular symbolic form. Following the characterization of symbolic forms as perspectives from which we attribute distinct structures of meaning to experiential input, we may treat cultural heritage as constituted by a process through which we attribute meaning to the objects and practices associated with a community’s past, with a goal of making sense of the community’s present (and the perceived future) realities. What makes a particular historical artifact an instance of cultural heritage is precisely such a process of interpretation, through which we utilize the objects of our pasts to better understand our present.

A robust way in which heritage helps us make sense of our present is by helping us better understand (or establish in the first place) who we are. Cultural heritage objects, through their role in the history of the communities with which we associate ourselves, help us make sense of who we are, as individuals and as members of a larger cultural collective. It helps us construct meaningful narratives of our place in the world and its history, and, through this, it helps us better understand and model who we are. Additionally, by attributing meaning to objects or practices of the past, groups assert (and validate) their identities as members of the group. In many respects, the group’s heritage represents the world that the group finds itself in and what it values, and so, to

---

cultural communities. The Dedekind-Peano axioms veridically define natural numbers in Jaipur today as they did in 19<sup>th</sup> Century Turin. Compare this to the symbolic form of history or myth, the concrete contents of which can be quite a contested matter and may vary significantly between different communities.

an extent, is a representation of the people themselves, as they relate to the group in question.

In this respect, the symbolic systems account of cultural heritage has a lot in common with the particularist model of heritage that I identified in the first chapter of the thesis. The symbolic forms account of heritage also appeals to cultural heritage's ability to represent expressions of the collective identity of the group. However, the symbolic forms account, unlike the particularist model, does not claim that heritage is ultimately about expressions of shared identity (and, hence, the symbolic forms account does not imply the claim that we ought to define heritage as objects and practices that express communal identities). Rather the connection with identity simply follows from the definition of cultural heritage as a symbolic form.

Such a connection with identity allows the symbolic forms account of cultural heritage better explain the tragedy involved in cultural heritage loss or destruction. Consider the 2019 fire at the Notre Dame cathedral in Paris. When large parts of the cathedral were destroyed, the incredible sense of loss that was felt by many was not only due to the loss of a priceless material artefact of historic, scientific, and aesthetic importance. Communities to whom Notre Dame has significance have lost a large part of a meaningful historical object that establishes their identity and, through this, helps explain who they are and what is relevant to them as members of those communities. In this respect, losing one's cultural heritage can amount to a sense of physically losing a piece of yourself or those who are dear to you. Reflecting on the fire of Notre Dame, Hornstein writes:

When a place is no more—or, as we've seen, chunks of that physical site have been destroyed—it becomes a kind of anthropomorphic feeling, as though we lost that part of ourselves: a loss of body parts, to put it bluntly. It's almost as though we're losing part of who we are, if we see ourselves as French people, primarily. Then, move from that to all the people of the world who have seen that place or know of that place through images or through stories. A loss of something physical relates to how we understand the world. (quoted in (Moon 2019))

#### ***2.4.1 The construction of cultural heritage***

As the characterization of cultural heritage above suggests, a relevant feature of the account of heritage that I am proposing here is its present-centredness, namely that (at least a significant portion of) the purpose of heritage is to help us make sense of our

present (and our future, as we relate to it in the present). This is a general point that could be made about any symbolic form; their purpose is to make our experiential input presently meaningful, so in this respect all symbolic forms can be perceived as present-centred. But there is an additional layer of present-centredness that is particularly characteristic of cultural heritage. Namely that cultural heritage, while oriented towards history, memory and the past, is never about the past alone (or even in the first place) but is rather about the role the past plays in the present.

As Lowenthal astutely notes: “in domesticating the past we enlist [heritage] for present causes... [it] clarifies pasts so as to infuse them with present purposes” (Lowenthal 1998, xv). Heritage, *qua* symbolic form, is not a static representation of the past, but rather an ever-changing one that is very quick to adapt to circumstances and the needs of a community that claims it. In this respect, we may often learn more about cultural heritage by looking at the community’s present circumstances than by looking at its past. Such present-centredness gives this account of cultural heritage a distinct constructionist dimension. By employing historical objects for a variety of our present needs we construct the contents of cultural heritage from the perspective of our present circumstances. Without such practices, historical objects would not exist as cultural heritage. They would continue existing as, say, material artifacts, but they only become cultural heritage when we start treating them as cultural heritage by employing them for our present needs.

One complication of characterising cultural heritage in this way is that it will encompass instances of heritage that are potentially harmful. Because heritage is understood here as a construct that is used for various present purposes of the community, some of which lead to exclusion and marginalization,<sup>42</sup> it may be difficult to see in what sense this account could be well suited to ground a human right to cultural

---

<sup>42</sup> Consider cases in which cultural heritage is used to facilitate an exclusionary identity that can actively oppress others. For instance, consider how an appeal to the “glorious” past of former Russian empire (both its czarist and Soviet form) is used as a way for Putin’s regime to motivate hatred of countries that were formerly part of the empire. The construction of an identity narrative about the inherent greatness of Russia and the historic injustice that losing regions of the empire that were by right theirs has brought on, allows this regime to present the now independent countries and their residents as the enemy who needs to be “taught a lesson”.

heritage. After all, we want human rights to protect objects that are valuable and good and not ones that are inevitably marginalizing and otherwise oppressive. But this worry is misplaced, given that the work that is being done here is purely descriptive. That is, the symbolic systems approach to heritage does not seek to establish that cultural heritage is worthy of preservation simply in virtue of an object being an instance of heritage. All that I am doing at this point is discussing what the bare concept of cultural heritage could plausibly be taken to be; the normative work with regards to reasons to preserve cultural heritage (and which heritage ought to be preserved) will be done in the following part of the thesis, where I will show why we should say that there is a human right to (some instances of) cultural heritage.

I think this neutrality is a virtue rather than a shortcoming of the symbolic systems account. Cultural heritage is a notoriously complex phenomenon that does not have only positive value. While some instances of cultural heritage can be extremely important to some specific community and their communal identities, to another it can signify severe trauma and conflict.<sup>43</sup> The contested nature of cultural heritage makes preservation of its instances an equally contested matter. It is crucial that we be sensitive to this, especially in attempting to justify a human right to cultural heritage. And keeping the concept as neutral as possible will allow us to better account for this complexity.

## 2.5 Concluding remarks

The purpose of this chapter was to provide a philosophical account of the concept of cultural heritage that could be used as a foundation for a human right to cultural heritage. After outlining the desiderata for an account of culture (and cultural heritage) I narrowed my focus to the symbolic systems account of culture and characterized cultural heritage as a particular symbolic form. It is a meaning-creating perspective from which we approach objects of our past with the goal of making sense of our present circumstances. However, I do not mean to argue that objects of cultural heritage are therefore immaterial meaning structures. Rather, I want to suggest that

---

<sup>43</sup> Consider, for instance, the Confederate flag, which to some Americans is an instance of positive cultural heritage and to others is a sign of hatred, trauma and exclusion in virtue of its association with historical and contemporary racism.

without such meaning structures, we would not be able to conceptualize the material objects (or immaterial ones, such as customs, rites, etc.) as objects of heritage. In the same way that we can distinguish the concept of art from objects of art (Marra 2015, 430), we ought to also distinguish cultural heritage from objects of heritage. However, much like the concept of art is necessary for us to be able to identify objects of art (and in this sense prior to the objects that it names), the concept of cultural heritage is necessary for the existence of objects of cultural heritage. Human rights to cultural heritage will protect both the objects and the practices that define them as cultural heritage.

The persuasiveness of this account of cultural heritage to some degree hangs on whether one finds the Cassirerian picture of culture plausible. But one of the strengths of the philosophical account of cultural heritage provided here is that it fits exceptionally well with what cultural heritage professionals, who have direct access to cultural heritage preservation policy, identify as the most salient features of cultural heritage. And insofar as the work that is being done in the thesis seeks to respond to a pressing practical concern—to provide a conceptual foundation for a novel approach to cultural heritage protection—such a connection to cultural heritage preservation practice is quite valuable.

Such salient features are exactly the ones that I have identified above. First, cultural heritage is a present-centred *process* as opposed to merely a set of objects, and a proper inquiry into the concept of cultural heritage entails an engagement with the process by which historical objects become cultural heritage (L. Smith 2006). As a result, heritage experts often adopt a “constructionist perspective which regards the concept [of cultural heritage] as referring to the ways in which very selective past material artifacts, natural landscapes, mythologies, memories, and traditions become cultural, political, and economic resources for the present” (Graham and Howard 2008, 2).<sup>44</sup>

---

<sup>44</sup> The UNESCO Convention for the Safeguarding of Intangible Cultural Heritage also puts a strong emphasis on the present-centred construction of cultural heritage: “[i]ntangible cultural heritage, transmitted from generation to generation, *is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history*” (UNESCO 2003a). Additionally, the now former UN Special Rapporteur for Cultural Rights, Karima Bennouna, in her 2016 report notes that it is important to recognize cultural heritage “as living and in an organic relationship with human beings” (OHCHR 2016), this way suggesting that cultural heritage and meanings associated with it are not set in stone, but are rather (re)negotiated in the context of the community’s present reality. Similarly, she also emphasizes that “much

Additionally, cultural heritage is seen as primarily instrumentally valuable—it is valuable due to the role it plays in our lives and not per se. As Graham and Howard note, it is now largely agreed that:

[m]ost heritage has little intrinsic worth. Rather, values are placed upon artefacts or activities by people who, when they view heritage, do so through a whole series of lenses, the most obvious of which are: nationality; religion; ethnicity; class; wealth; gender; personal history; and that strange lens known as ‘insideness’. (ibid.)<sup>45</sup>

While I think the question whether cultural heritage has intrinsic worth is an open one, the account that I have provided also puts a distinct emphasis on the human dimension of cultural heritage. Objects of cultural heritage encompass a broad range of things from material artifacts and natural landscapes to intangible cultural practices and traditions (ibid.), but an important implication of the symbolic systems account is that cultural heritage is less about actual (tangible or intangible) objects from the past than it is about the meanings that cultural groups and their individual members place on those objects to make sense of their realities. Hence, cultural heritage, according to the current account, is ultimately not about the objects themselves, but rather about people and the meaning they create and attribute to those objects.

This implication provides us with an additional reason why the symbolic forms account is a good contender to underwrite the human rights approach to cultural heritage preservation. Recall that one of the central claims of the human rights approach to cultural heritage was that our obligations to preserve it are derived fully from our obligations to human beings. Hence, one important step in justifying the human rights approach is to show how do objects of cultural heritage connect to human beings and in

---

of what we consider heritage is the result of continuous recreation throughout history, with each layer adding to its meaning and value” (ibid.).

<sup>45</sup> Bennoune also makes a similar point about cultural heritage that human rights are meant to protect in her report to the UN General Assembly. According to her, what human rights protect is not cultural heritage itself, but rather our practices involving the interpretation of historical objects identified as cultural heritage: “the mandate on cultural rights has been established to protect not culture and cultural heritage per se, but rather the conditions allowing all people, without discrimination, to access, participate in and contribute to cultural life through a process of continuous development” (OHCHR 2016, ibid.).

what sense are they relevant to them. According to the symbolic forms account, the very idea of cultural heritage is impossible without human beings, and it is relevant to us because it is an important way for us to meaningfully relate to the world.

This is not to say that this explication of relevance of cultural heritage is sufficient in grounding a human right to cultural heritage. Much more needs to be said about the role cultural heritage and the objects that the concept designates play in our lives and how they interact with our other needs (and the rights that are potentially generated by those needs) before we can securely establish a human right to them. Therefore, this account of heritage is but a preliminary to the work that needs to go into grounding a human right to cultural heritage, but one that nevertheless suggests a potentially fruitful way forward, which I explore in the next part of the thesis.



## **Part II: A Human Right to Cultural Heritage**

## Chapter 3:

# Foundations of a Human Right to Cultural Heritage

### 3.1 A human right to cultural heritage

While there is no explicit provision on a right to cultural heritage in the main human rights instruments, heritage is unsurprisingly identified as an integral part of culture, something to which there is a relatively well-established human right. The document that is often mentioned in the literature where the connection between culture and cultural heritage rights is most robust is the General Comment No. 21 to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (CESCR 2009). The definition of culture provided there looks like a typical list of cultural heritage objects:

The committee considers that culture, for the purpose of implementing article 15 (1) (a), encompasses, *inter alia*, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, [...] natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives. (CESCR 2009, 4)

Such direct mentions of cultural (and cultural heritage) rights in the international human rights instruments may suggest that there is a relatively quick and unproblematic way to establish the link between cultural heritage rights and human rights. If one has a human right to their culture, and cultural heritage is an integral part of one's culture, then one may have a human right to their cultural heritage.<sup>46</sup>

---

<sup>46</sup> This strategy has been proposed by the former UN special rapporteur for human rights, Farida Shaheed. In one of her reports to the UN General Assembly Shaheed argues that given that cultural heritage

The appeal of this strategy in establishing a human right to cultural heritage depends on what one takes human rights to be. The strategy, with further elaboration, might work quite well if we view human rights as simply and solely as legal instruments.<sup>47</sup> Under such an understanding of human rights, they come into existence “as norms of national and international law that are created by enactment, custom, and judicial decisions.” (Nickel 2019). To say that there is a human right to cultural heritage, is then simply to say that there is such a right *qua* legal right established by certain international treaties and otherwise enacted in law. And indeed, as I just noted, we may derive such a right from a human right to culture—a right present in various global and regional human rights instruments.

Despite its initial appeal, the exclusively legal approach to human rights faces several difficulties. Importantly, one may worry that simply pointing to the relevant human rights instruments may not be too helpful in *justifying* the human rights approach to cultural heritage. More precisely, one might think that all this shows is that it would not be inconsistent with the language of documents such as the UDHR, International Covenant on Civil and Political Rights (ICCPR) or ICESCR to treat rights to cultural heritage as a human rights concern. What precisely supports them and, relatedly, what exactly such rights look like remain open questions that require further investigation.

This question is an urgent one if we want the human rights approach to cultural heritage to succeed. Human rights to culture and its various manifestations, such as cultural heritage, can be quite controversial. One of the most frequently heard criticisms of the so called third-generation rights, to which cultural rights belong, is that they lead to human rights inflation, which, in turn, results in a devaluation of human rights. The

---

occupies a central position in one’s cultural life, rights to cultural heritage ought to be encompassed under cultural rights and, hence, be treated as human rights (OHCHR 2011).

<sup>47</sup> A frequently mentioned instance of such a view of rights is found in Bentham, who in a classical legal positivist vein, held a version of the view that rights are solely legal instruments and vehemently argued against including extralegal elements in accounts of rights. Against natural rights (which many take to be proto-human rights), he famously wrote in *Anarchical Fallacies*: “Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts. [...] A right is a child of law: from real laws come real rights, but from *imaginary* laws, from laws of nature, fancied and imagined by poets, rhetoricians, and dealers in moral and intellectual poisons, come *imaginary* rights, a bastard brood of monsters, ‘gorgons and chimaeras dire.’” (Bentham 1987, 53, 69)

worry, put in other words, is that to have the required normative force, human rights must be limited in number, and we should only call those rights human rights disrespect of which amounts to exceptional injustice.<sup>48</sup> What is more, the longer the list of human rights, the more demanding—and hence more difficult to enforce—the project becomes. Every genuine right has correlative duties that must be fulfilled for the right to be properly enforced. The more rights there are, the more duties those responsible for fulfilling them—usually states—will have. Such duties can be quite costly, especially if we consider rights to include correlate positive duties, and therefore make the human rights project more difficult to enforce. Indeed, adequately fulfilling a lot of these quite demanding duties may be difficult for even the richest states.<sup>49</sup> Providing a good justification for such rights is not going to address all the issues that arise with this side of the inflation worry but is an important conceptual first step.

A variety of putative human rights face this worry, ranging from proposals to treat sleep, tourism and coexistence with nature as human rights to rights that have been recognized by various international human rights instruments, such as rights to development, peace (Theilen 2021) and, importantly, culture and its various manifestations.<sup>50</sup> So, the fact that a right has become part of international human rights law and human rights practice more generally does not make it immune to the worries that the inflation objection raises. Importantly, one need not embrace the view that the only way for us to retain the normative force of human rights is to severely limit their list to appreciate the pull of the inflation worry. If nothing else, it provides important

---

<sup>48</sup> For an influential formulation of this worry, see (Wellman 1999).

<sup>49</sup> Consider a classic example of a similarly controversial right, a right to healthcare, and how costly the duties generated by it can be. A lot of these are quite costly positive duties and are traditionally viewed as owed by the state to its citizens. For instance, the Committee on Economic, Social and Cultural Rights emphasizes that states party to the ICESCR have a core minimum obligation to ensure: (i) the right of access to health facilities, goods and services; [...] (ii) access to minimum essential food which is nutritionally adequate and safe; (iii) the provision of essential drugs; (iv) equitable distribution of all health facilities, goods and services (OHCHR 2000).

<sup>50</sup> It is common to categorize human rights into three generations: first civil and political rights, secondly social, economic, and cultural rights and lastly solidarity rights and rights to peace and development (Vasek 1977). As Cruft et al. (2016, 23) note, both the second and third generation rights are targets of the inflation worry.

reasons to require a more robust justification of the human rights model of cultural heritage preservation. Without this, one may worry that treating cultural heritage as something we have a human right to is but mere rhetoric, as opposed to a serious strategy that seeks to account for the most crucial human needs.

Responding to such issues requires showing that cultural heritage is not just something which we have a nondescript interest in preserving, but that such interests are fundamental to our wellbeing. In other words, what is required to provide a justification for a human right to cultural heritage is a further elaboration on what form such interests take and how precisely they connect with principles underlying human rights. This strategy involves moving beyond an exclusively legal approach to human rights and inquiring into their normative foundations. That is, we need to identify normative principles that ground human rights and show how cultural heritage relates to them.

Importantly, my suggestion that we move beyond the exclusively legal approach to human rights should not be taken as a rejection of the claim that human rights are *also* legal instruments. In what follows I will assume that human rights exist in several different modes. We may think of them both as legal rights, enshrined in law and as moral rights, i.e., rights underwritten by moral foundations that give them their normative force.<sup>51</sup> In what follows, given the normative work that I am setting out to do,

---

<sup>51</sup> This understanding of human rights seems uncontroversial amongst contemporary human rights scholars. Rowan Cruft, although not conceptualising human rights exclusively as legal rights, notes that legal human rights are “legal determinations or operationalisations of pre-legal natural human rights” (Cruft 2019, 150), where such natural rights are grounded in how they serve the individual right-holder. But even scholars who primarily think of human rights qua legal rights will often integrate such foundations in their theories. For instance, Samantha Besson argues that the dual nature of human rights—they are both legal and moral—is one of the sources of international human rights law and is what accounts for the objectivity of international human rights law (Besson 2017). Allen Buchanan, while arguing against accounts of human rights that equate them with moral rights and instead preferring to treat them as legal rights, notes that such legal rights need to be morally justified (Buchanan 2013). It is commonly noted that without some sort of a normative foundation, existing independently of their legal dimension, human rights would be unable to perform their primary task, i.e. respond to severe injustices (Killmister 2018), (Nickel 2019), (Shestack 1998). As Nickel notes, “if human rights exist only because of enactment [in law], their availability is contingent on domestic and international political development” (ibid.). This entails that in states that have not adopted human rights law, human rights are not being violated. This sits quite uncomfortably with what we generally consider human rights and their role to be.

I will for the most part focus on cultural heritage rights *qua* moral human rights, unless explicitly stated otherwise. I will briefly turn to legal human rights in the final chapter (Chapter 6) of the thesis in which I address the concrete legal duties that human rights generate.

Briefly presented, my strategy in the following chapters will be to trace the relevance of cultural heritage to our well-being by way of its centrality to the formation of both the individual *I* and the collective *we*, each of which is a necessary component to securing human dignity—a widely assumed grounding principle of human rights. In this chapter I will provide some preliminary remarks about the role dignity plays in human rights and clarify how I will be using the concept throughout the thesis.

Before I move on, one final preliminary needs to be addressed. It is common in the literature to distinguish between two broad approaches to human rights. On the one hand, human rights are defined as a set of natural rights that we have simply in virtue of our humanity. As such, they are often (though not exclusively) seen as ahistorical and independent of political institutions. Call such accounts *moral accounts of human rights*.<sup>52</sup> An alternative set of accounts, call them *political accounts of human rights*, will primarily define human rights in virtue of their practical political function in either domestic or global affairs (Nickel 2019).<sup>53</sup> Such functions, among other, involve “setting standards of political legitimacy, serving as norms of international concern, and/or imposing limits on the exercise of national sovereignty” (Etinson 2018).<sup>54</sup>

---

Consider the case of apartheid South Africa: “many people have argued that the black majority in apartheid South Africa possessed a moral [human] right to full political participation in that country’s political system, even though there existed no such legal right. [...] What many found so morally repugnant about apartheid South Africa was precisely its denial of numerous fundamental [human] moral rights, including the rights not to be discriminated against on grounds of colour and rights to political participation, to the majority of that country’s inhabitants” (Fagan 2015). This said, to convince a Bentham-style legal positivist, one might need to provide a more elaborate defence of the claim that human rights have both a legal and a moral dimension, something that is beyond the scope of this thesis and needs to be left for future work; hence, I have simply assumed it here.

<sup>52</sup> Examples include (Cruft 2019), (Gilbert 2016), (Griffin 2008), (Tasioulas 2016) and (Nussbaum 1997).

<sup>53</sup> Examples include (Raz 2010, 31), (Raz 2018) (Beitz 2009, 197), (Rawls 1999).

<sup>54</sup> It might be tempting to reduce this distinction to one I have already addressed above, i.e., human rights as legal rights vs human rights as moral rights. But this would be an oversimplification of the debates.

In what follows, I will remain largely agnostic towards how precisely we should understand human rights, either along the lines of the moral or political approaches.<sup>55</sup> What I instead will explore is the connection between cultural heritage and the interests that human rights protect that, I hope, could appeal to those on either side of the debate. Admittedly, an approach to justifying a human right to cultural heritage that relies so heavily on foundational normative principles (in the case of my argument, dignity and, ultimately, self-governance) may appear to sit more naturally with moral approaches to human rights. I have already admitted that I take human rights to be moral rights, in addition to legal rights. It is also a well-established strategy of moral accounts of human rights to justify an existence of a human right by showing how it protects a central interest of ours in virtue of which we are said to have human rights, and this is exactly the route I take in the rest of the thesis, tying cultural heritage to self-governance and dignity.

This said, there is conceptual space for such foundational principles within the political approach. It is true that the mark of the political approach is arguing against the *reduction* of human rights to moral rights grounded in the protection of essential human interests alone. Both Joseph Raz and Charles Beitz, two of the foremost proponents of the political approach to human rights, have explicitly argued against such views. But while each have instead suggested that human rights ought to be defined by their political function, such political function is still at least in part guided by essential individual interests. According to both Beitz and Raz, the political function of human rights is to

---

Through focusing on human rights practice, the proponents of political accounts often pay close attention to human rights as legal rights, but, as I have mentioned above (see *supra* note 51) it is common amongst human rights scholars of all varieties to recognize the moral dimension of human rights, especially as a means to account for the universal applicability of human rights. See (Raz 2010), (Beitz, *The Idea of Human Rights* 2009), (Killmister 2018) and (Valentini 2017). Similarly, it is not uncommon for those working on the moral foundations of human rights to explicitly state that human rights are *also* legal rights. See (Tasioulas 2016), (Cruft 2019).

<sup>55</sup>I am, however, partial to approaches that acknowledge the multidimensional nature of human rights. In this, I am in agreement with Waldron, according to whom it is likely that to explain the nature of human rights, given their conceptual and pragmatic complexity, we need an eclectic approach that combines both the moral and the political approaches: some rights might be best identified as human by appealing to distinctly human interests others by their violation being a matter of global concern (Waldron 2018).

defend the most pressing individual interests from state infringement (Beitz 2009), (Raz 2010, 31).<sup>56</sup> Identifying such interests might therefore prove to be important when one is seeking to justify a controversial right, such as a human right to cultural heritage, even if human rights are best understood by reference to their political function. If nothing else, it provides a useful tool for answering the inflation worry—something that applies to controversial rights conceptualised in the language of either the moral or the political approaches.

### 3.2. Dignity and the philosophical foundations of human rights

The appropriate justification of the human rights approach to cultural heritage will depend heavily on the operative principles associated with human rights. One quite common strategy in searching for such principles is to appeal to human dignity, either as an inherent feature or as a status that each individual human being has. The concept of dignity is commonly presented as forming at least part of the foundation of human rights, both as a moral enterprise and as a political practice. It is mentioned as such in some of the central human rights instruments. For instance, both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, explicitly identify dignity as the foundation of human rights. The Preambles of each emphasize “the inherent dignity of the human person” as something from which the rights listed in the Covenants derive.<sup>57</sup>

---

<sup>56</sup> Raz goes so far as to say that human rights are “by their nature moral rights that call for legal-political protection” and that their importance consists in “affirming the worth of all human beings” (ibid.), though he for the most part seems to remain agnostic towards what such moral foundations, qua correlate moral rights, might look like. And this is no surprise, for his primary focus is human rights practice, not the conceptual underpinning of human rights. His focus is on developing “the criteria by which the practice should be judged” (Raz 2018, 143). And the legitimacy of the human rights practice, according to Raz, should not be judged by whether we can develop a correct account of such conceptual foundations. Beitz argues that human rights are best understood as *sui generis*, as opposed to moral rights: “human rights are the constitutive norms of a global practice whose aim is to protect individuals against threats to their most important interests arising from the acts and omissions of their governments” (Beitz 2009, 197).

<sup>57</sup> Similarly, consider Article 1 of the Universal Declaration of Human Rights, according to which “All human beings are born free and equal in dignity and rights” or Article 22, which explicitly grounds a



Perhaps considering this, many (at times substantially) different philosophical accounts of human rights claim that human rights are in one form or another closely connected with the preservation of human dignity. One quite popular view—call it dignity foundationalism—takes the connection between human dignity and human rights expressed in the Preambles of human rights instruments such as ICCPR and ICESCR at face value. It involves arguing that dignity plays an explicitly foundational role: we can derive human rights, either deductively or with the help of some empirical premises, from human dignity (Waldron 2015, 126). In virtue of this we can use it as a test of sorts to determine whether something is an authentic human right or not. As Doris Schroeder claims, dignity’s function in the context of human rights is to inform their content (Schroeder: 2012, 334). Pablo Gilibert presents dignity’s justificatory power as one of the desiderata for a successful account of dignity. That is, one’s account of dignity in the context of human rights, “should help us formulate and defend the human rights we have reason to accept” (Gilibert 2016, 202). Human rights violations are distinct moral wrongs, and such distinctness is explained by their connection with human dignity. Therefore, to determine if something can be treated as a human right, we must first and foremost show that denying that right to a person would be harming their dignity.<sup>58</sup>

A different strategy of linking human dignity and human rights is frequently found in the work of those who consider dignity to be best understood as a status term. That is, instead of treating dignity as an intrinsic quality we have simply in virtue of our humanity, the proposition is to view it as “a status human beings possess, comprising stringent normative demands” (Valentini 2017, 865). Such views commonly ascribe a more modest role to dignity in human rights, albeit without denying its overall significance. For instance, some argue that dignity, understood as a status rather than an

---

significant portion of the human rights enterprise, namely, economic, social and cultural rights in dignity: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”.

<sup>58</sup> See (Gilibert 2016) for an instance of such a view. John Tasioulas also has a similar take on human rights, adding interests as an additional component of their normative foundation (Tasioulas 2016). Others (Hawthorne 2011) have treated dignity as a proto-right of sorts from which all other rights derive.

inherent quality of human beings, would be better understood as a specific, self-standing human right—such as a right not to be humiliated or degraded—than as a foundation for other human rights (Rosen 2012, 58-60).

Others note that human rights advance human dignity—understood in the status sense—in important ways, even without dignity playing an exclusively foundational role. Adam Etinson argues that “institutionalization of [human rights] itself expresses a certain [dignifying] regard for the importance of the individual in society” (Etinson 2020, 380). It empowers the individual through expressing “confidence, trust in, and respect for their decision-making capacities” (ibid.). Human dignity ensures that such empowerment is allotted to all *equally*. Relatedly, dignity establishes the status of all persons as proper objects of respect that human rights generate. So, according to Etinson, dignity is then not “*the* foundation from which all human rights are ‘derived’, [...] but [rather] an important prelude to such rights: an invitation to see humanity as, at base, a society of equals” (ibid.).<sup>59</sup>

Jeremy Waldron similarly suggests that instead of being viewed as a foundation of human rights, dignity ought to be understood as a status that *comprises* a given set of rights (Waldron 2015, 134): “like every status term, it abbreviates a list of rights. We do not have human rights because we have human dignity; our having human dignity *is* our having human rights.” (ibid.). In virtue of this, dignity also works as an organizing principle of sorts for human rights: “it comprises not just a set of human rights, but an *underlying idea* which explains both the importance of these rights in relation to our being human and the importance of their being packed together in this regard. [...] [Dignity] doesn’t just abbreviate [human rights], it refers to the idea that underlies them” (ibid. 136).

It is not my intention here to defend any particular view regarding the relationship between dignity and human rights.<sup>60</sup> What I rather wanted to do is highlight

---

<sup>59</sup> Importantly, Etinson does not deny that dignity could be a principle from which *some* human rights are derived. His claim is that it is not the sole foundational principle from which *all* human rights are derived.

<sup>60</sup> There is no space here to adequately address this point, but I find it plausible that human rights and human dignity might interact in several different ways, so to settle on one account of the role dignity plays in human rights might not be the right way to go. The view that dignity is a term that seeks to capture our equal moral status, establish us as entities to which human rights apply and the importance of such rights

the thought that the two are intricately interlinked and this connection may be useful for one who seeks to provide a justification for a controversial right, such as a right to cultural heritage. Following this, what we need to do to begin providing a justification for a human right to cultural heritage is to show that cultural heritage is interlinked with human dignity. Of course, each of the accounts of the way dignity links up to human rights outlined above will likely present us with a different justification for a human right to cultural heritage. The route I will take sits most naturally with the foundationalist take on dignity and human rights. More precisely, my argument for a human right to cultural heritage will involve showing that at least in certain circumstances, not having access (or no longer having access) to one's cultural heritage can amount to violations of human dignity. And insofar as dignity is at least one of the foundational elements of human rights, through this we can get to a human right to cultural heritage.

While I will not focus on all the ways to elucidate the relationship between dignity and human rights I have identified here, I think all of them could provide useful ways in justifying a human right to cultural heritage. Consider especially Rosen's proposal to treat dignity as a self-standing human right implying an entitlement not to be degraded

---

seems to me in principle compatible with at least a moderate form of foundationalism. A foundationalist could (and should) agree that dignity plays such a role, but also note that there are at least some rights that seem to explicitly be stemming from dignitarian concerns, suggesting a foundationalist justificatory strategy for at least some rights. Something along these lines is also suggested in Etinson's account of dignity, where he suggests that some human rights by way of their implied entitlements not to be humiliated or degraded do indeed seem to be grounded by dignity (Etinson 2020, 379). What is more, if we want to be faithful to human rights practice, we might want to include at least some form of dignity foundationalism in our accounts of the relationship between dignity and human rights, given the explicitly foundationalist language found in places such as the Preambles of the UDHR and the following Covenants. Similarly, a foundationalist may need to concede that not all rights will be equally grounded in dignity. As Gilibert notes, some rights—rights to due process, for instance—seem to call for different normative grounds, such as fairness (Gilibert 2016, 212). A similar point is made by Nickel. Nickel, while otherwise being sympathetic to inquiries into normative foundations of human rights, criticizes views that reduce such foundations to a singular principle (Nickel 2009). According to Nickel, not all perfectly justifiable human rights naturally reduce to dignity, but to argue for this reason that they are not therefore authentic human rights would be throwing the baby out with the bathwater. Of course, much here depends on how we define the content of dignity. But here too there is space for some pluralism, as I will argue in the next section.

or humiliated. Etninson also suggests something similar: while dignity is not the exclusive foundation of human rights, some specific human rights, namely those that protect against humiliation and degradation, could be said to be derived from it (Etninson 2020). One way to go in using this strategy to ground a human right to cultural heritage would be by appealing to linkage style arguments. Pioneered in Henry Shue's work on rights to subsistence and security (Shue 1980), such arguments justify a more controversial right by showing that it is either logically or pragmatically necessary for the effective implementation of an already established right (Nickel 2009). Following this reasoning, one would then need to show that an effective implementation of a right not to be subject to humiliating and degrading treatment—arguably a canonical human right—would require at least some access to one's cultural heritage. While this line of reasoning requires much more support before its plausibility can be established, the variety of cases in which the destruction of a group's cultural heritage has been used as means to degrade and ultimately destroy it<sup>61</sup> suggest that it may be a fruitful avenue to explore in justifying a human right to cultural heritage.<sup>62</sup>

A seemingly more difficult task would be to show how a human right to cultural heritage could be justified by an account of dignity as that found in Waldron work. In his account, dignity is not intended to do much justificatory work, it rather is an organizing principle—one that explains the relevance of human rights and establishes us as moral entities to which human rights apply. But this is not to say that such accounts do not leave space for a human right to cultural heritage. Waldron is not against foundational pluralism, according to which some human rights might indeed be grounded in dignitarian harms. Like Rosen and Etninson, he explicitly states that such rights would involve prohibitions on “degrading” treatment (Waldron 2015, 119). This way there is space for a strategy as that outlined above, for which we would need to show that loss of cultural heritage could amount to humiliation and degradation.

---

<sup>61</sup> Such acts are especially common in the context of genocide, where cultural heritage destruction is often used as one of the tools to degrade and break the spirit of members of the targeted groups by destroying objects central to their identity. For more on the relationship between cultural heritage destruction and genocide see (Davidavičiūtė 2021), (Wise 2017) and (Card 2003).

<sup>62</sup>See (Waldron 2015, 120) and (Waldron 2018).

### 3.3 Dignity and self-governance

In the previous section I discussed the role dignity is often taken to play in human rights and how it might help us justify a human right to cultural heritage. But identifying the relationship between dignity and human rights is not enough to start providing such a justification. What makes following the justificatory strategy that relates cultural heritage to dignity a complicated task is the opaqueness of dignity. Like many frequently used political concepts, such as liberty and justice, the content of “dignity”, at least in one overarching form, can be rather difficult to pinpoint. What is more, it is prone to subtle contextual shifts in meaning. The nature of the required link between cultural heritage and dignity will depend on what precisely we take dignity to be here, so getting clear on this question is a crucial task before any other inquiry into its connection to cultural heritage can proceed.

There is no explicit definition of dignity in any of the human rights instruments that invoke it. While one may consider the general lack of overarching agreement about what dignity amounts to as a good reason to move on to other ways of grounding human rights, we may alternatively view “dignity”, at least as it applies to human rights, as a sort of technical concept that is a work in progress still at an early stage of elaboration (Waldron 2015, *ibid.*). In light of this, there is no shortage of views on what dignity amounts to, and providing a new positive account of dignity would regrettably far exceed the limits of this thesis. What I rather will do in what follows is focus on identifying a feature that many such accounts to a varying degree share and in the coming chapters show why and how cultural heritage contributes significantly to its preservation. It is common in the literature to tie dignity, by way of specifying its contents, to an object, principle, or feature of moral concern that is less murky and controversial. One quite frequently invoked such underlying feature is our ability to be self-governing agents.<sup>63</sup> In these contexts, self-governance—also referred to as normative agency—is broadly defined as “exercising one’s rational capacities in choosing and pursuing worthwhile goals from a suitably broad range of options” (Tasioulas 2016, 52). In what follows I will be using normative agency and self-governance interchangeably.

---

<sup>63</sup> See (Henry 2011), (Kateb 2011), (Killmister 2009), Griffin (2008), (Dworkin 2006).

I do not mean to suggest here that the content of dignity is necessarily exhausted by normative agency alone, as philosophers such as James Griffin (2008) do. In fact, I find it likely that, much like the relationship between dignity and human rights may not be exhausted by one way of elucidating it, the concept “dignity”, as it is used in human rights practice and theory, does not neatly reduce to one overarching quality of human beings. We are complex beings and it does not strike me as implausible that being treated with the dignity we deserve involves respecting a variety of our capabilities and qualities, such as, in addition to normative agency, our ability to have deep personal relationships, our ability for accomplishment, for play, etc (Tasioulas 2002). But in what follows I set such considerations aside and focus primarily on normative agency. There is no space here to adequately address such a pluralist account of human dignity, let alone show how a human right to cultural heritage might be grounded in it. Given that normative agency is an integral feature of it, showing that normative agency and cultural heritage are strongly connected will be enough to get us off the ground in justifying a human right to cultural heritage. I leave working out the details of such a pluralist account of the contents of dignity for future work.

What makes exploration of the relationship between cultural heritage and normative agency especially interesting and a potentially fruitful way of investigating conceptual foundations for human rights to cultural heritage is that the commitment to the claim that human rights, to one degree or another, are about the securement of normative agency is shared amongst many of the various (often otherwise quite different) approaches to human rights. So, even if one is discontent with the notion of dignity and its connection to human rights, the relationship between human rights and preservation of normative agency seems to be more difficult to deny.

As I have mentioned above, in some of these approaches self-governance is construed as the central feature from which human rights are derived. This is especially prominent with approaches that see dignity as an inherent feature of ours, as opposed to a status. For instance, James Griffin’s, Allen Gewirth’s and Carol Gould’s accounts all explicitly endorse self-governance’s foundational connection to human rights.<sup>64</sup>

---

<sup>64</sup> “Free” agency is also similarly central to George Kateb’s account of human rights. See (Kateb 2011). Charles Beitz’s account of dignity also invokes self-governance. According to Beitz, dignity, in the context of human rights, ought to be understood as the status of a self-directing agent (Beitz 2013). However, in

However, Gewirth, Griffin and Gould outline the relationship between self-governance and human rights in different ways. For Griffin and Gould, the purpose of human rights is to protect agency, if in different ways, given their slightly differing accounts of agency. I will briefly return to this in the following chapter, but for now it is enough to note the similarity between their views. That is, they both justify human rights instrumentally, i.e., in their ability to protect self-governance. Gewirth, on the other hand, justifies human rights non-instrumentally. Human rights are not about the protection of agency but are rather necessary *conceptual* components for our agency. The very idea of agency is not possible without my understanding myself and others as bearing human rights (Cruft, Liao and Renzo 2016, 19).<sup>65</sup>

In other accounts of human rights foundations, self-governance is but one component of the larger list of features grounding human rights, but one that nonetheless plays a foundational role. A characteristic example of this approach is found in views that derive human rights from a list of objective human goods that are viewed as our basic needs, in all of which agency appears. John Finnis, for instance, argues that human rights are grounded in a list of basic aspects of human well-being, one of which is agency *qua* self-governance.<sup>66</sup> Similarly, Matthew Liao proposes an account of human rights, according to which human rights protect the fundamental conditions for pursuing a good life, one of which is also agency (Liao 2015, 43). Another similar account of human rights foundations that is less commonly associated with agency, but one for which the concept is nonetheless crucial is Martha Nussbaum's capabilities approach. According to Nussbaum, capabilities form the basis of human rights through being something that every human being is entitled to. Capabilities can be broadly defined as

---

Beitz's view, dignity ought to be understood not as something from which all human rights are derive, but, similarly to Waldron, as something that helps us explain "why it matters that we have an international practice of human rights at all" (ibid. 288).

<sup>65</sup> A perhaps less frequently mentioned account of human rights that also derives human right from agency is found in Amartya Sen's work. He explicitly grounds human rights in a broad understanding of normative agency and freedom (Sen 2009).

<sup>66</sup> Finnis identifies agency as "practical reasonableness", i.e., our ability of bringing our "intelligence to bear effectively (in particular reasoning that issues in action) on the problems of choosing one's actions and life-style and shaping one's own character" (Finnis: 2011, 88).

our opportunities to “choose and to act to achieve certain functionings, and functionings are various states and activities than an individual can undertake” (Cruft, Liao and Renzo 2016, 15) (Nussbaum 2003).<sup>67</sup> Nussbaum proposes a list of capabilities from which human rights are derived. While the list is supposed to be open-ended and subject to change, the core capabilities that Nussbaum has consistently referred include life, bodily integrity, emotions, agency (or what Nussbaum calls “practical reasoning”) (Nussbaum, *ibid.* 41). Agency is also independently relevant to Nussbaum’s account as a feature that is of central importance to our humanity: human beings are “*sources of agency* [emphasis mine] and worthy in their own right, with their own plans to make and their own lives to live...deserving of all necessary support for their equal opportunity to be such agents” (Nussbaum 2000, 58).

As I have mentioned before, my aim in the rest of the thesis is not to argue for the superiority of one of these accounts over the others, but rather to argue, in some sense of the term, for all of them. In other words, I want to suggest that if it can be shown that normative agency is indeed sufficiently relevantly connected to cultural heritage, then the fact that several of the most prominent present accounts of human rights would present it as a human right gives us all the more reason to believe in the legitimacy of the human right to cultural heritage.

### 3.4 Conclusion

In this chapter I have argued that more work needs to be done to lay the conceptual foundations of a human right to cultural heritage: it is not enough to point to a human right to culture that has been established in the International Bill of Human Rights. I then suggested that one potential way to begin addressing such foundations is to show how cultural heritage relates to features that human rights are often said to be connected to. A foundation from which I will derive a human right to cultural heritage is human dignity and one of its constitutive components, normative agency. In the following chapters I will explore precisely how our normative agency is facilitated and, in certain circumstances, constituted through cultural heritage.

---

<sup>67</sup> Agency can also be said to be central to the capabilities approach because capabilities are functioning that we *decide*—agentially through the will—to pursue.





# Chapter 4:

## A Human Right to Cultural Heritage

### 4.1. Introduction

In the previous chapter I identified a strategy that would justify a human right to cultural heritage by appeal to its relevance to our normative agency and, through this, to the preservation of dignity. In this chapter I explore this strategy further by inquiring into how precisely cultural heritage and normative agency interact.

Linking cultural concerns and normative agency is not new, especially in the liberal tradition. Close attention has been paid to the relationship between autonomy, one of the constitutive elements of normative agency, and culture. The impetus for this connection came from critiques of a type of liberalism that relies on overly individualistic portrayals of autonomous agents as rational self-deciders, operating fully independently of any outside influence or collective.<sup>68</sup> A famous argument for cultural rights due to the importance of culture to autonomy, proposed by Will Kymlicka, comes as a revision of this type of liberalism.<sup>69</sup> Building on work of Charles Taylor, Yael Tamir, Avishai Margalit and Joseph Raz, Kymlicka argues that freedom is “intimately linked with and dependent on culture” (Kymlicka 1995, 75). It is both a condition for autonomy, as our ability to choose between meaningful options, and a resource for critical reflection necessary to revise our previous such decisions, should we so choose: “cultural

---

<sup>68</sup> For instance, Charles Taylor argues that one’s identity as an autonomous being and the exercise of autonomy could neither develop nor be sustained without a particular kind of society and cultural context that values autonomy and has institutions to support it (C. Taylor 1979)

<sup>69</sup> Kymlicka is not alone in emphasizing the relevance of the cultural context for liberalism. Dworkin has argued that culture “provides the spectacles through which we identify experiences as valuable” (Dworkin 1985, 228)

membership provides meaningful options, in the sense that ‘familiarity with a culture determines the boundaries of the imaginable’” (ibid. 89).<sup>70</sup>

The cultural groups that are relevant here are generally territorially, historically, and linguistically bound entities, such as national groups, ethnic groups, sub-national ethnic minorities, indigenous communities, and the like. Membership in such groups forms a significant portion of our conceptions of ourselves.<sup>71</sup> Such groups are held together by a common and relatively stable culture, which I will understand broadly in the way defined in Chapter 2: as a group-specific inherited system of symbolic forms through which we make the world meaningful and communicate said meaning. Culture, in this sense, is generally reflected in a full range of human activities: “social, educational, religious, recreational, and economic life, encompassing both public and private spheres” (Kymlicka 1995, 76).

Often such cultural groups—as parts of a larger territorially and historically bound unit, such as a state—do not have sharp boundaries: they overlap, are intertwined or, at the very least, influence one another. Consider how in some countries, for better or worse, national groups overlap with ethnic groups: to be, say, Polish, for the most part, is to be of Polish ethnicity. Similarly, the dominant religion of a larger community can influence its national identity and vice versa.<sup>72</sup> Or consider as well how distinct cultural practices of various sub-national communities become seamlessly integrated in the

---

<sup>70</sup> For a similar take on the relevance of culture, see (Lear 2008).

<sup>71</sup> I focus on these groups here, because it seems that there is a robust tendency for our identities to be strongly and centrally influenced by membership in them. Additionally, there also seems to be a tendency that membership in these groups, perhaps due to their centrality to our conceptions of ourselves, in large part influences and organises other group memberships. Consider how determining of gender norms our broader societal—often along the lines of national groups—culture can be. This is not to say that membership in other groups that I do not address here, such as, say, political groups, social groups based on our gender or sexuality, etc. and their corresponding cultures are not going to make up a significant portion of our identities. We are complex and diverse creatures who draw from many sources when it come to our senses of self. But exploration of how membership in such groups and, possibly, their cultural heritage interacts with our normative agency must be set aside for future work.

<sup>72</sup> A good illustration of this is the use of Catholicism as a nation building tool in various post-Soviet countries. For instance, in Lithuania, Catholicism became an important resource for national identity, as it was a mark of dissidence during the staunchly anti-religious Soviet rule. (Cruz 2014)

dominant national culture.<sup>73</sup> We are certainly members of various such cultural groups all at once: one's identity is not exhausted by, say, religious affiliation alone, however important it may be. Together the various cultural groups and their more local cultural practices form a broader culture of the society living within a certain state. Kymlicka calls this "societal culture" and Raz and Margalit "pervasive culture" (Margalit and Raz 1990). My focus here will be on such pervasive cultures of states and their composition by a variety of smaller-scale cultural influences of various groups within the states. If for nothing else, it is states that are traditionally tasked with the fulfilment of the duties that human rights generate; therefore, my investigations here will be restricted to them.

The accounts of culture's influence on us mentioned above, while not without their critics,<sup>74</sup> constitute a well-established way of thinking about culture's connection to liberal values, such as autonomy. I think we have good reasons to consider them as telling at least part of the story of the centrality of culture to our well-being. Nowhere is this as evident as in cases of violent and targeted loss of culture, such as in contexts of genocide.<sup>75</sup> Consider the following excerpts from interviews Louise E. Wise conducted with genocide survivors from the Nuba Mountains in Sudan and their reflections on the loss of agency resulting from cultural loss. One interviewee invokes loss of autonomy by commenting on cultural loss as resulting in a slave mentality:

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

---

<sup>73</sup> Consider how easily, for better or worse, various historic celebratory practices can cross cultural group lines. Celebrating Halloween, first a Celtic pagan holiday of Samhain and then a Christian All Hallows Eve, is now for the most part an entirely secular holiday that has become part of the traditional yearly festivities in countries such as the US. Similarly, initially a pagan holiday in Lithuania, Vėlinės—a rough equivalent of Samhain—has become a primarily Catholic holiday that is one of the most important holidays of the year in Lithuania.

<sup>74</sup> See (Waldron 1992) and (Parvin 2008).

<sup>75</sup> I also discussed these interviews and the connection between loss of culture and loss of agency in (Davidavičiūtė 2021).

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. (Wise 2017, 847)

Another person shares a similar experience of loss of agency in the face of cultural destruction, which is expressed by feeling “mechanical”:

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. (Wise 2017, 847)

As I have argued elsewhere (Davidavičiūtė 2021), testimonies such as these suggest that harms of cultural loss and destruction run much deeper than they may initially appear. They may result not only in damage to (or even loss of) one’s autonomy and normative agency more broadly but may also “bring about the feeling of losing the entire world that [one has] previously inhabited, insofar as our world is defined by cultural structures and the projects that we undertake in virtue of being influenced by them” (ibid.). These are all weighty reasons to consider culture to be something we have a right to.

But what we need to ground a human right to cultural heritage here is not only a recognition of the deep relevance of culture to our normative agency, via its constitutive elements such as autonomy, but a more thorough investigation of how precisely *cultural heritage* ties together with normative agency and its various constitutive components. Cultural heritage, while arguably a part of culture, is not conceptually fully reducible to it. Furthermore, culture is not a homogenous entity and different aspects and categories of it likely influence our normative agency differently, with some instances of culture being more central to our normative agency than others. Arguably, what Kymlicka and others mean when they use the term “culture” is a set of all cultural practices and cultural categories that form a certain background to our lives. Such a background is made up of a variety of distinct practices idiosyncratic to our cultures, but what’s relevant to our normative agency is that the set of such practices itself is generally there; this says nothing about the relevance of its specific instances. After all, we might lose a great

number of instances of culture, without losing cultural belonging and the benefits to our normative agency that it bestows. Cultures are dynamic, and cultural traditions change—even those that at some point might have seemed like profoundly deep ones—while the overall cultural background stays.<sup>76</sup>

Such arguments might show—and I think quite convincingly so, insofar as we take normative agency to be at the foundation of human rights—that there is a unique and distinct human right to culture, due to its relevance to our normative agency. But what I am after here is a grounding for a right to cultural *heritage*, a specific instance of culture. So, crucially, what remains to be shown is that cultural heritage loss in particular is damaging to one’s normative agency.

The chapter proceeds as follows. I first outline how I will be using the term “normative agency” and why one’s sense of self is a central to normative agency. Applying the account of cultural heritage that I have developed in chapter 2, I then move on to explore how our identities link up with our normative agency, via our cultural heritage. I will argue that cultural heritage is a central component of normative agency, through its role in shaping our memory, both collective and individual, and, through this, our sense of self. Additionally, cultural heritage can itself be viewed as an expression of our normative agency. Hence, if human rights are at their foundation—or at least in part, as one of the components of such a foundation—about the securement of normative agency and the conditions for it, we have a strong case to treat cultural heritage as a human right. I conclude by considering several objections to this treatment of the relationship between cultural heritage and normative agency.

---

<sup>76</sup> Consider what an important aspect of the culture of pre-industrial societies might have been living a more rural life. Take the case of Russia, where urbanization rose dramatically in the 1930s under Soviet rule. Arguably, the rural, peasant life was an important part of Russian culture in the nineteenth century not only because a significant portion of the Russian population was rural, but also through its romanticization in the work of Russian literary figures, such as Lev Tolstoy, whose work heavily idealised and simplified peasant life. Such cultural notions changed dramatically during the twentieth century due to both the Soviet push towards urbanisation and the ideological contrast between the peasant class and the proletariat. Despite these changes and the severe trauma inflicted by the Soviet regime, a general cultural identity of being Russian seems to have remained strong.

## 4.2. Cultural heritage and normative agency

I have broadly defined normative agency as the distinctly human ability to choose and to pursue a worthwhile life. What precisely does this ability come down to? It is common in the literature on human rights and agency to distinguish between the content of agency and our ability to exercise it. To the former category belong capacities that make agency up, such as autonomy and liberty—characteristics necessary in our *being* agents, i.e., forming a picture of a worthwhile life and pursuing it (Kymlicka 1995) (Griffin 2008). The latter category describes conditions necessary for the *exercise* of normative agency.<sup>77</sup> As James Griffin notes, “the value behind human rights is not just the dignity of *being able* to be an agent but also of being one” (ibid., 47, emphasis mine). In other words, human rights also ought to ensure the conditions for our autonomy and liberty, characteristics necessary to be someone who has “the capacity to choose and to pursue our conception of a worthwhile life”.<sup>78</sup> Carol Gould provides a similar take on agency and human rights in *Rethinking Democracy* (1988). Here Gould seeks to reconceptualize the notion of agency (to which she broadly refers to as “freedom”) to encompass not only the traditional negative liberties (i.e., freedom from constraint) but

---

<sup>77</sup> According to some human rights scholars, talk of normative agency ultimately reduces to talk of personhood, and these two components of agency are ways to flesh out what personhood comes down to. Consider the following passage from Griffin:

Human rights can then be seen as protections of one’s human standing, one’s personhood. And one can break down the notion of personhood into clear components by breaking down the notion of agency. To be an agent, in the fullest sense of which we are capable, one must (first) choose one’s own course through life—that is, not to be dominated or controlled by someone or something else (autonomy). And one’s choice must also be real; one must (second) have at least a certain minimum education and information and the chance to learn what others think. But having chosen one’s course one must then (third) be able to follow it; that is, one must have at least the minimum material provision of resources and capabilities that it takes. And none of that is any good if someone then blocks one; so (fourth) others must also not stop one from pursuing what one sees as a good life (liberty). (Griffin 2001, 11)

<sup>78</sup> Importantly, what is implied in this definition of human rights is that they are not about the defence of a worthwhile life, but about its pursuit. In other words, human rights are not meant to guarantee a worthwhile life, but rather are meant to guarantee the conditions that will allow us to form a conception of such a life and proceed in attaining it.

also the positive ones. According to Gould, there is something strange about the utterance “one is free to do X” if one does not have the means to do so: “for the exercise of choice to be more than empty intention it requires that agents have access to a range of conditions through which they can make their choices effective” (Gould 2009, 9)

In other words, one can be an agent—a free self-decider—but other conditions need to be met for us to effectively be able to practice said agency. For instance, I must have a certain amount of education to be able to make informed decisions about my life (Griffin 2008, 47). Similarly, certain minimal provisions need to be secured, such as a basic amount of shelter, food, and healthcare, for me to physically function as an agent. Following the line of liberal thinking about culture briefly presented above, culture is also a condition for the exercise of agency, because without it one would neither have the necessary context of choice for autonomy to function properly, nor the resources for the critical reflection and, potentially, revision of my plans and aspirations (Kymlicka 1995, 81). Importantly, the function of human rights is to protect both features of agency, i.e., both our status as normative agents and the resources that are necessary for us to exercise our agency. So, there is a right to life, because without one normative agency would be physically impossible.<sup>79</sup> Similarly, there is a human right to free expression and

---

<sup>79</sup> A common objection to approaches that consider normative agency to be the sole grounding principle of human rights, as Griffin does, is that it excludes a significant portion of vulnerable people from being subject to human rights. Consider the human right to life. If this particular human right were grounded in normative agency alone, those who do not have the capacity of normative agency—such as infants, or people with severe mental impairments or who are comatose—could not claim a human right to life. Many strategies have been pursued to respond to this worry. Griffin simply bites the bullet and argues that indeed those who cannot be normative agents do not have human rights. This should not mean that they are not owed “the weightiest” obligations or are not subjects of the highest moral concern. Such concern is simply not going to be grounded in human rights (Griffin 2008, 95). Others, such as George Kateb, have argued that dignity is something that applies to our species; hence, if some individual lacks it, human rights extend to them in virtue of their species membership (Kateb 2011). As I have suggested in the previous chapter, I am most sympathetic to pluralism when it comes to the foundations of human rights. That is, human dignity—or any other foundational principle of human rights, for that matter—is likely not exhausted by a singular quality of ours. Therefore, a human right to life should not be grounded in normative agency alone, but in other values as well, such as, for instance, our intrinsic worth as human beings, individual irreplaceability and the like.



assembly, to freedom to worship and to a free press, because without them, “autonomy would be hollow” (Griffin *ibid.*, 33).

Cultural heritage matters to normative agency precisely in this second sense; i.e., cultural heritage is an important condition for the effective exercise of normative agency. Throughout the thesis, I have treated cultural heritage in broadly constructionist terms. That is, I proposed to understand cultural heritage as a symbolic form, i.e., as a meaning-making structure yielding in a very selective list of tangible and intangible historical objects and practices of a community that are used as resources for making its present circumstances meaningful. To talk about the cultural heritage of, say, Scotland, is therefore not to simply (or perhaps even primarily) refer to Scotland’s history or a list of valuable historical tangible or intangible objects—Gaelic, Edinburgh’s New and Old Town, the Braemar Gathering and so forth—but also about how quite a selective list of historical artifacts and practices responds to the needs of both the individuals that make up a certain community and the community itself. A central such need is self-definition—both on the individual and the communal level.<sup>80</sup> In other words, objects of our past are selected as our cultural heritage with the goal of defining us in the present, as individuals belonging to a certain cultural community the existence of which is securely established by its extension in time. Under this picture, cultural heritage, by its very nature, is closely tied to one’s sense of self, one’s identity.<sup>81</sup>

---

<sup>80</sup> The relationship between cultural heritage and identity is frequently explored in both scholarly and policy work in cultural heritage preservation. For a comprehensive scholarly study of the relationship between cultural heritage and identity see (Graham and Howard 2008). Consider also the following passage from the UN’s former Special Rapporteur in the Field of Cultural Rights Karima Bennoune’s report for the ICC case against Ahmad al-Faqi al-Mahdi, a member of the Ansar Dine, a Tuareg Islamist militia in North Africa. Al-Mahdi was found guilty in 2016 for the war crime of destroying historic and religious building in Timbuktu. Bennoune notes that cultural heritage is defined as “encompassing the resources enabling cultural identification and development processes of individuals and groups” ICC, quoted in (Ferri 2018). “It provides individuals and communities with resources allowing them to qualify themselves, define their identity and build their sense of belonging” (*ibid.*)

<sup>81</sup> In what follows I will be using “sense of self” and “identity” interchangeably. And, unless otherwise indicated, I will take them to mean one’s self-understanding, understood as the set of characteristics that we take to make us who we are. But it should be noted that the two terms need not necessarily be

How precisely does cultural heritage, thus understood, function as a condition for normative agency? In the following sections I will focus on the relevance of cultural heritage to our individual sense of self, via its connection to both our individual and communal memory. Our sense of self is the locus of normative agency, so showing that something is central to it is tantamount to showing that it is central also to our normative agency.

### 4.3. Cultural heritage and our sense of self<sup>82</sup>

It is helpful to begin the discussion of cultural heritage, memory, and normative agency by first looking at the connection between autonomous agency and individual personal memory. John Christman, in the aptly titled article “Why Search for Lost Time?” and later in the *Politics of Persons*, investigates the relationship between autonomy and autobiographic memory, which he defines as “memories structured as extended narratives, sequences of experiences, actions, and events that occurred over time and which partly constitute the story of one’s life” (Christman 2008) (Christman 2009, 88). Christman argues that autobiographic memory plays a “constitutive role in the ongoing construction of the [narrative] sense of ourselves” (Christman 2008, 152). Memory does not work as a “passive and literal recording of reality”, remembering rather involves constructing a narrative based on stored data (ibid.). Such narrative remembering, according to Christman, “is necessary for one’s sense of self; it verifies, structures, and constitutes one’s self-concept.” (ibid., 149). This is crucial for autonomous action, because without a temporally extended sense of self, self-evaluation and critical reflection, both of which are crucial for autonomy, would be impossible (ibid., 155). It follows from this, that we cannot really make sense of the notion of normative agency, without the notion of temporally extended sense of self, to understand which we need to have access to memories of our personal histories.

---

coextensive. One’s sense of self can be a broader category and could encompass one’s awareness of a variety of physical sensations, as one’s spatial awareness of themselves.

<sup>82</sup> Some excerpts of this section have appeared in a paper I have recently published, based on the research that is done in the thesis. See (Davidavičiūtė 2021).

But just as our memories are necessary for our sense of self, so are the social factors that shape our identity important to how and what we remember. Our ability to remember and the contents of our autobiographical memories are heavily embedded in our sociocultural context and the identity categories that it generates. As Christman also notes, “remembering is often undertaken amidst interpersonal interactions and social expectations, factors which directly shape the structure and contents of memories” (Christman 2009, 92). So, our autobiographical memories are, at least in part, socially constructed through our belonging to various cultural groups.<sup>83</sup>

One way in which our autobiographical memory is influenced by our cultural context is through the interaction of our individual memories and the histories of the cultural groups to which we belong.<sup>84</sup> Our sense of self has a variety of historic sources, not all of which will reduce to that which we have directly experienced (Assmann 2008). Our autobiographical memories and, by extension, our senses of self, are grounded in narratives constituted by a variety of dimensions of our being in the world. Some such sources of our memory are the events that happened to us alone, but others involve the histories we as individuals have in virtue of belonging to various cultural communities. Often the two are intimately intertwined, so much so that it might be difficult to precisely pinpoint where one ends and the other begins.<sup>85</sup> Consider how deeply

---

<sup>83</sup> See, among others, (Jobson and O’Kearney 2008), (Fivush, et al. 2011), (Wang 2016) and (Dudai 2016).

<sup>84</sup> I do not mean to be advocating here for any form of cultural essentialism or any other position that would suggest that there is something biological or similarly inescapably predetermining about our culture, which could be used to justify stereotyping and other forms of harmfully exclusionary treatment of people. If anything, I think that analyses such as mine, Christman’s and others mentioned here reveal to what extent cultural categories that we often take as inherent are indeed socially constructed. This is not to say that noting that something is socially constructed immediately alleviates the worry of cultural essentialism. One could acknowledge that something is a socially constructed, contingent feature of a cultural group, but still maintain that it is somehow deeply characteristic of *all* of its members and base sweeping judgments on this. But the recognition of social construction of cultural matters gives us a promising departure point to counter such harmfully essentialising categorisations in rejecting the claim that the cultural features on which such categorisations are based are inherent and, in this respect, inescapable.

<sup>85</sup> Recent psychological research strongly supports this claim. In a recent study Gagnepain et al. (2020) studied 30 years of media coverage of World War II in French national television and the effects of the historical narratives thus formed on the participants’ recollection of the World War II display in the Caen

influential to our autobiographical memories are collective memories of historic trauma. Susan Brison recounts Yael Tamir telling her a story “in which she and her husband, neither of whom had been victims or had family members who had been victims of the Holocaust, literally jumped at the sound of a German voice shouting instructions at a train station in Switzerland. The experience triggered such vivid ‘memories’ of the deportation that they grabbed their suitcases and fled the station” (Brison 1999, 47).

Tamir, of course, did not have a memory of something that had personally happened to her, but to say that she had a false memory also seems to be getting things wrong. As Brison suggests, what we should rather here say is that the “cultural climate in which she was raised led her to respond instinctively to certain things [...] in ways characteristic of those who had actually been deported.” (ibid.) Similarly, as Kansteiner argues, “[t]he very language and narrative patterns that we use to express [autobiographical] memories, are inseparable from the social standards of plausibility and authenticity they embody” (Kansteiner, quoted in (Green 2004, 37)). The significance of our cultural-historical context to our ability to remember is, therefore, undeniable—it is a distinctly human ability to draw on historically established cultural discourse to make sense of oneself and one’s life (Green 2004).

This way of framing the processes of identity construction relies on the distinction between individual and collective memory. The analogy between collective memory and individual memory is not perfect. The notion of collective memory is founded on a metaphor of sorts, at least if “memory” is primarily defined as a psychological process that takes place in one’s mind. For one, as Assmann notes, in the case of collective memory there is nobody to actually do the remembering and the objects “remembered” are often occurrences of times long gone (Assmann 2008, 216). Collective memory is therefore necessarily a mediated memory: it resides in material symbols, historic objects, and practices interpreted from the perspective of the present (ibid.). Considering this, we may argue that cultural heritage is such an instance of a collective memory of a particular cultural community, materially—or immaterially in cases of intangible cultural heritage—embodied. And given that collective memory is an

---

Memorial Museum. The research showed that collective memory “organizes individual memories and constitutes a common mental model that connects people’s memories across time and space” (ibid. 189).

important source of our autobiographical memory and our sense of self—which in turn are necessary conditions for normative agency—cultural heritage is an important condition for our normative agency.

Furthermore, as I have argued elsewhere (Davidavičiūtė 2021, 609), cultural heritage not only is a condition for normative agency, but it could also be understood as an expression of normative agency itself. Recall that one of the essential features of the account of cultural heritage that I have provided here emphasizes the creation of cultural heritage from the perspective of our present circumstances. 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.<sup>86</sup> In this respect, the treatment of historical objects as cultural heritage themselves can be seen as an expression of normative agency. While group participation is necessary for the creation of cultural heritage and normative agency is something that applies first and foremost to individuals, we should not discount the role that each and one of us plays in this construction, by participating in cultural heritage narratives, legitimizing them, or rejecting them (*ibid.*). This grounds both a right to cultural heritage and the responsibility to be wary of the harms—which I will discuss in the following chapter—that such construction of cultural can bring.

#### 4.4. Objections

In the remaining part of the chapter, I will address two concerns that one may have regarding what has been said above. The first concerns whether cultural heritage is really as important to our normative agency as I claim it is. The second concerns whether what is important to our normative agency is our actual cultural heritage or simply that we have *something* that plays the role of cultural heritage. Much more can be said about them than I have space for here, but my goal at this point is not to exhaust all that can be said in response but rather to further clarify the argument presented in this chapter.

---

<sup>86</sup> See (Graham and Howard 2008, 6).

#### ***4.4.1 Is cultural heritage really so important?***

One may agree with all of the above and correspondingly conclude that cultural heritage is indeed quite important to us but disagree that is important enough to ground a human right. Cultural heritage matters to each of us and, therefore, to our normative agency, to varying degrees. For some people it might indeed play an unquestionably central role in identity formation and maintenance. Consider tight-knit indigenous communities, for whose members loss of their cultural heritage would indeed signal a deeply damaging departure from their sense of self and, considering this, would be severely limiting of their normative agency.<sup>87</sup> However, the thought goes, to others, especially those whose sense of self is constituted by membership in more numerous communities (national, sub-national, political, etc.), loss of cultural heritage as such might be much less threatening to normative agency. It would certainly constitute a loss, perhaps even a great one, but might still not touch one's normative agency in a significant way, at least not in the same way as other, more canonical human rights violations, such as enslavement or loss of life would. Considering this, one might concede that there is a special right to cultural heritage—perhaps a right of particular groups, such as indigenous communities—while rejecting that it has the universal appeal required to ground a human right.

I have two responses to this worry. First, we might not always be in the best position to tell whether and to what extent cultural heritage is truly unimportant to us. This may be especially true about those of us who had the fortune never to have had our

---

<sup>87</sup> The recent bulldozing of the sacred Djap Wurrung Birthing trees to make space for a highway by the Australian government serves as a good example. The Birthing Trees signify the location where Djap Wurrung women would go give birth (Wahlquist and Bucci 2020). The placenta would be mixed with the tree seed “and from then on, as it grew, it became the child's own ‘directions tree’, a place where they could come for spiritual guidance.” (Groch 2020) The trees and the land that they are on are sacred to the Djap Wurrung people and are central to their senses of self. They are locations where the presence of the ancestors is felt. As Lidia Thorpe, a Djap Wurrung woman, puts it: “when these trees, these places are destroyed, it's like a death. We can't get them back” (quoted in (Groch, *ibid.*)). As other activists have noted, commenting on the importance of the land and the trees: “if the land is destroyed so is our dreaming. Our dreaming is our story. It is what connects us to the beginning of time, back to our spirit ancestors, our creators.” (Djap Wurrung Embassy 2020)

cultures and histories threatened, either because we belong to the dominant cultural groups or because we were otherwise lucky to not have to confront the tragic circumstances in which cultural loss takes place. Members of underprivileged and marginalized communities, such as indigenous groups, ethnic minorities, national groups that were swallowed up by colonial empires (or countries with a colonial mindset) or members of groups that were singled out for genocidal destruction may feel the weight of the importance of cultural heritage much more than someone living a comfortable middle-class life in the contemporary Western Europe. Our normative agency is not threatened when the conditions for its flourishing are secured for us. But it would be a mistake to assume that such conditions are unimportant, simply because they were never in danger of being gone.

What is more, not all cultural heritage narratives are explicitly endorsed. Culture and our consciously or unconsciously internalised heritage often work as *background conditions* for our agency, a set of meaning-producing memories we *presuppose* when we act. The mythologies we are brought up with, the traditional customs that we have internalized, the historic languages that we speak all are present with us every step of the way, whether we are actively aware of them or not. So, it is entirely possible that we might not be consciously aware of how relevant our cultural heritage is to us and that we might become aware of such relevance, say, only when it is gone. Of course, destruction of a particular piece of our cultural heritage, especially when said object is not especially central to us, might not be deeply damaging to our normative agency, even if constituting a loss. But the loss of the ability to participate in and otherwise access the collective cultural memory of our communities that *extensive* cultural heritage loss results in, would be existentially disorienting and, in light of this, damaging to our normative agency, be it a small tight-knit cultural community or a larger, more diverse cultural group (insofar as there are instances of cultural heritage that are applicable to it, and it has a homogenous collective memory).

Second, I think the persuasiveness of this objection relies on where we set the threshold for normative agency. If something can be a genuine object of a human right only in those cases where without said object, normative agency would be entirely lost, then we might have to start thinking about looking elsewhere for a principle to ground a human right to cultural heritage. But if this indeed were the case, then we might have to question the ability of normative agency to be at the conceptual foundation of human

rights in the first place, even if one among several other principles. My worry is that a great deal of much less controversial human rights would not qualify as such if we took this hard-line approach. Normative agency comes in degrees, and we might need a very limited list of things to sustain it in the most minimal form: perhaps something akin to freedom of thought (in order to be able to freely form a conception of a good life) and a right to life (in order to be able to physically pursue our conception of said life).

However, canonical human rights traditionally seen as relating to normative agency, such as a right to political participation, a right to education, right to free speech, right to religion, etc. seem to be set to guarantee more than a rudimentary amount of normative agency, but rather something that allows us to function as normative agents, not just meet its minimal threshold. Griffin, as I have mentioned above, explicitly acknowledges this by arguing that human rights don't only protect one's normative agency, but also its exercise (Griffin 2008, 47). And if this is indeed the case, then cultural heritage, through its centrality to our sense of self, seems to fall under conditions that need to be met for our normative agency to function.

#### ***4.4.2 Whose cultural heritage?***

One might concede that through its importance to normative agency, there indeed is a human right to cultural heritage, but take the argument above to have established only that access to *some* culture and cultural heritage is important to normative agency, not access to one's own cultural heritage. Something like this worry has been famously raised by Jeremy Waldron in "Minority Cultures and a Cosmopolitan Alternative" (1992)—a response to accounts that emphasize our special need to participate in a life of a *particular* community "as a source of meaning, integrity, and character" (Waldron 1992, 756).

The communities that Waldron is referring to are understood primarily as ethnic, particularly as they were perceived by nineteenth-century German romanticists, such as Johan Gottfried von Herder. That is, "a particular people sharing a heritage of custom, ritual, and a way of life that is in some real or imagined sense immemorial, being referred back to a shared history and shared provenance or homeland." (ibid.) Rights to culture (and, by extension, cultural heritage), especially those of minorities, according to Waldron, are then based on the claim that there is a special need to belong to such



communities (ibid., 759). This is a misguided picture, according to Waldron, because living in a modern, increasingly globalized world entails drawing from various distinct cultures and cultural heritages. So, our cultural affiliation might function as a context of choice, but this context is much broader than might initially appear. As Waldron notes,

A freewheeling cosmopolitan life, lived in a kaleidoscope of cultures, is both possible and fulfilling. [...] Immediately, one argument for the protection of minority cultures is undercut. It can no longer be said that all people need their rootedness in the particular culture in which they and their ancestors were reared in the way that they need food, clothing, and shelter. [...] Such immersion may be something that particular people like and enjoy. But they no longer can claim that it is something that they need. [...] The collapse of the Herderian argument based on distinctively human *need* seriously undercuts any claim that minority cultures might have to special support or assistance or to extraordinary provisions or forbearance. (Waldron, ibid. 762)

Following this, Waldron proposes a “cosmopolitan alternative”: bits of cultures come into our lives from different sources and there is no one ethnic culture that defines us. So, the picture of a cosmopolitan identity that emerges is the following:

The cosmopolitan may live all his life in one city and maintain the same citizenship throughout. But he refuses to think of himself as *defined* by his location or his ancestry or his citizenship or his language. Though he may live in San Francisco and be of Irish ancestry, he does not take his identity to be compromised when he learns Spanish, eats Chinese, wears clothes made in Korea, listens to arias by Verdi sung by a Maori princess on Japanese equipment, follows Ukrainian politics, and practices Buddhist meditation techniques. He is a creature of modernity, conscious of living in a mixed-up world and having a mixed-up self.” (ibid. 754)

He acknowledges that culture might be important to us as a context of choice, but it by no means needs to be ours in any genuine way. As he puts it: “we need cultural meanings, but we do not need homogenous cultural frameworks.” (ibid., 786.). So, at best, rights to culture ought to be viewed as rights to religion, which, according to Waldron, are negative rights of non-interference. Certainly, governments must ensure that people are free to belong to and practice their cultures, but there is no right to state

sponsorship. Consequently, if particular cultures disappear, we ought to treat this similarly to the death of particular religious practices: “if a particular church is dying out because its members are drifting away, no longer convinced by its theology or attached by its ceremonies, that is just the way of the world. It is like the death of a fashion or hobby, not the demise of anything that people really need” (ibid., 762).

A frequent response to arguments of this form is that the plausibility of Waldron’s cosmopolitan alternative is strongly overstated (Kymlicka 1995, 85). This response is based on an empirical observation: our cultural groups, especially those to which we belong from birth, such as those corresponding with our particular nationality, ethnicity and the like, are generally deeply important to us.<sup>88</sup> They centrally shape our senses of self, and we are simply not the kind of creatures who can easily change our

---

<sup>88</sup> I emphasize cultural communities that one is born into here because generally they and the cultural heritage associated with them are ones that are most central to our self-narratives in the way I have been discussing above. The centrality of such cultural heritage to our senses of self is in part accounted for by our being deeply immersed in such cultures by growing up in them. Compare the sense of self (and the relevance of their cultural heritage to it) of someone who discovers through genetic testing as an adult that they are part Native American—often such tests lump a heterogeneous set of specific indigenous groups under one such category—to that of someone who has been brought up fully immersed in the culture of the Navajo. In the first case, learning of such heritage often amounts to a fun curiosity that, of course, might become part of our self-narrative, but not in a way as central to us as belonging to a cultural community from birth would be. It is in principle also possible for someone’s self-narrative to be centrally shaped by the culture of a community one has not experienced from childhood. There will be cases in which someone learns of their ancestry in their adult life and connecting with that community’s culture and cultural heritage can become quite an important part of their self-narrative. Cases like these are infrequent, primarily because it would involve a dramatic shift in one’s sense of self—something that seems more difficult to do the older we get. But consider the case of Csánád Szegedi. One of the founders of the Hungarian far right and explicitly antisemitic party Jobbik, Szegedi discovered in his late 20s that he had Jewish ancestry. His maternal grandmother was an Auschwitz survivor and his grandfather spent time in forced labour camps. Half of his family were killed during the Holocaust (Sacks 2022). Szegedi, notoriously once railing against the Jewish Hungarians as “helping Israel colonize [Hungary]”, has converted to Judaism and started calling himself Dovid. He studies Hebrew and the Torah and has made several religious pilgrimages to Israel (Nelson 2014) and has considered moving there permanently (Krausz 2017). However, some doubt the sincerity of Szegedi’s conversion, seeing it as an opportunistic act of self-reinvention of a person whose career in a famously antisemitic party had virtually ended once his Jewish ancestry was revealed.

identities by smoothly switching cultures in a wholesale fashion (Margalit and Raz 1990). Our cultural heritage, *qua* material embodiment of the collective memory of the cultural groups to which we belong, plays a central role: it both shapes our autobiographical memory and provides an important component to our self-narrative by anchoring such a narrative in a more general history of the groups to which we belong. And while there indeed may be people who “are most at home leading a truly cosmopolitan life, moving freely between different societal cultures, [...] most people, most of the time, have a deep bond to their own culture” (ibid. 89)

Empirical observations aside, I think Waldron’s cosmopolitan alternative stands on shaky grounds in other respects. First, we would be hard pressed to find a contemporary theorist advocating for the relevance of culture (or cultural heritage) to our autonomy and our more general wellbeing, who would define culture in Herderian terms. This way of defining a culture, characteristic of German romanticism, usually ties it to ethnicity alone (as Waldron does too) and understands by culture a set of historic practices that are definitive of and exclusive to said ethnic group. The common culture of such an ethnic group is in turn presented as a foundation for a nation state. One of the problems with viewing cultures this way is that it treats them as static (given the focus on “tradition”) and isolated (due to the drawing of sharp boundaries between various cultures, given the emphasis on uniqueness of cultural practices to specific ethnic groups) units.<sup>89</sup>

This not only gives rise to dangerous essentialising practices but is also simply an inaccurate picture of how cultures work—both of which are reasons why, for the most part, such views have been abandoned in academic contexts. Fluidity and creolization are

---

<sup>89</sup> While scholars rarely appeal to this understanding of culture, it is still quite pervasive in practical political contexts. A good example of this is the use of culture in nation building in post-Soviet countries. Here nation building efforts relied almost exclusively on ethnic groups as the foundation of the newly formed states, and myths of historic national cultures of those specific ethnic groups were (and still are) quite pervasive. It is also tempting to consider this kind of understanding of culture to be at play in works of scholars like Kymlicka, Tamir, Raz and Margalit, given their explicit focus on the dominant cultures of national groups. However, unsurprisingly, none are committed to this picture of culture. While their focus is on national cultures, these are in no sense defined along the lines of ethnicity, but rather are meant to capture the general ways of being of a variety of members of a given state, who have a variety of affiliations, which then blend into something general that takes the form of a national culture.

essential to the vitality of any culture, ethnic, national, or otherwise. So we should not be surprised to find cultural practices of various distinct cultural groups become an integral part of the dominant culture associated with a state or a nation.<sup>90</sup> Under this picture, much of what Waldron labels as cosmopolitan cultural practices that are not bound up with any “need to belong” to any particular cultural group—a person living in San Francisco, who is of Irish descent, listening to Verdi’s operas and practicing Buddhist meditation techniques—may just be creolized cultural practices that have become part of the larger diverse culture of the anglophone United States (ibid. 85). Recognizing the origin of certain cultural practices need not make them any less parts of our culture.<sup>91</sup>

What is more, Waldron’s argument for a cosmopolitan identity seems to be premised on having no group attachments: we freely take bits and pieces of various groups’ cultural heritage but ourselves are free-floating entities without any specific (cultural) affiliation. But claiming a cosmopolitan identity is also very much a form of cultural belonging (to the group of cosmopolitans) and one that, at least in the form that Waldron suggests, is deeply embedded in a particular cultural context: Western liberalism along with its Enlightenment roots. Considering this, instead of being an independent cultural group, cosmopolitanism—at least the way Waldron envisions it—seems to me to be an integral part of liberal cultures.<sup>92</sup> Belonging to the group of cosmopolitans may

---

<sup>90</sup> Consider how frequently distinct ethnic groups influence the national historic cuisine of a particular state. For instance, much quintessentially Austrian culinary heritage was borrowed from the various ethnic groups that were either part of the Austro-Hungarian Empire, or actively engaged with it: coffee houses, Ottoman; apple strudel, Hungarian; pastries and apricot dumplings, Czech; Wiener Schnitzel, Italian *cotoletta alla milanese*, rebranded with a German name (Budianski 2021, 17).

<sup>91</sup> In a paper published several years after the “Cosmopolitan Alternative” Waldron significantly walks back his criticism of the importance of our particular cultures. While still committed to cosmopolitanism, Waldron concedes that our individual cultures are quite important to our wellbeing. In light of this, he calls the arguments presented in the “Cosmopolitan Alternative” “raffish airs of an insecure young man, thousands of miles from home, and grasping at whatever cultural straws he can reach to concoct an identity for himself” (Waldron 2000, 247).

<sup>92</sup> This is by no means to suggest that those not from Western liberal societies cannot be cosmopolitans, but rather that the form of cosmopolitanism at the centre of which is an autonomous agent, detached from any strict group affiliations—which is what Waldron seems to be advocating—is a Western cultural construct with deep roots in the Enlightenment. This form of cosmopolitanism, much like any other

produce as strong forms of attachment to cultural practices as belonging to more particular cultural communities and in virtue of this may equally well function as a clear condition for our autonomy. This might then give us all the more reason to preserve various cultures and their cultural heritages instead of letting them die out.

But to what extent there is a human right to these creolized cultural expressions and instances of cultural heritage that both a cosmopolitan and someone with more local cultural affiliations can enjoy is a bit of a different question. Something can be part of our general culture—there is a sense in which all culture and heritage is shared if we take the relevant community to be humanity—but we may not have a claim to all said cultural heritage by way of a human right. A human right to cultural heritage, like most other human rights, is not absolute, and the duties that are correlated with it need to fit with a variety of other considerations and duties generated by other moral considerations. For instance, a culture that has integrated a lot of diverse cultural practices as its own will inevitably face worries of cultural appropriation. This is especially the case with a cosmopolitan identity, where cultural heritage that is deeply significant to a particular—and often historically marginalized—sub-national group can easily become a commodity to be consumed for members of the more dominant cultural group. Claiming that there is a human right of the dominant group to said instances of cultural heritage that grants, say, unrestricted access and use of such cultural heritage can deepen and perpetuate the injustice that has already been committed against said group. I will address cases like these in the next chapter, but for now it suffices to say that they will impose limits on a right to cultural heritage.

## 4.5 Conclusion

In the previous chapter I argued that if we could show that cultural heritage connects meaningfully to normative agency, then we would have good grounds for a human right to it. More precisely, I have assumed that our dignity, a foundational principle of human rights, at least in part reduces to normative agency and its constitutive elements, such as autonomy. To secure dignity, we also need to secure the

---

cultural practice, can easily cross cultural borders either in its original form or as something that becomes creolized and takes on a distinct form as part of a different culture.

conditions for normative agency. In this chapter I have provided an argument for the relevance of cultural heritage to our normative agency and, specifically, autonomy. The initial premises drew from (by now) classic liberal arguments for cultural rights. Culture is central to genuine autonomy, as it both provides the context of choice and allows for revision of our life plans, by making alternative paths of action meaningful to us. I have shown that cultural heritage also plays a similar role; through its centrality to our senses of self—our identities—it too functions as a condition for our autonomy.

However, the work in providing a justification for a human right to cultural heritage is not fully done yet. I have considered some worries that an account of a human right to cultural heritage like mine will have to confront; namely to what extent cultural heritage truly is relevant to us and why is it significant that the cultural heritage be our own. But the two worries I outlined here by no means cover all the concerns one may have about a human right to cultural heritage, presented in the way I have been so far addressing it. One broad and urgent issue that needs to still be dealt with involves the limits of a human right to cultural heritage.

As I have already mentioned above cultures, by nature, are fluid and dynamic processes that involve creolization and hybridity. However, to what extent members of a dominant cultural majority have a right to creolized instances of cultural heritage associated with minority groups is not clear. Considering this, in the following chapter, one of the issues I will address is cultural appropriation of heritage and how harms associated with it may limit rights to cultural heritage.

An additional worry stems from the complex nature of cultural heritage. It is common to observe that, to a large extent, cultural heritage is a creative enterprise (Lowenthal 2015). Much like memory *qua* our individual psychological process, cultural heritage rarely offers a fully veridical slice of our cultural communities' pasts. To remember through cultural heritage is to construct a narrative about the past and our role in it from the perspective of the present and for the purposes of the present (Graham and Howard 2008, 2). The creative nature of cultural heritage can make it a powerful tool for nefarious ends, such as legitimization of narratives of exclusion, oppression, and justification of various other harmful practices (*ibid.*, 5). One might worry that if cultural heritage is so readily available for such ends, perhaps we should be wary of including it among the list of human rights.

And finally, cultural heritage has frequently appeared in arguments directly justifying various harmful practices, ranging from oppressive practices regarding gender to honour killings, female genital cutting and the like. States often see criticisms of practices like these as infringements on sovereignty and use arguments for cultural freedom to justify them. This has often given rise to scepticism about cultural rights (Waldron 1992).

My investigation of worries such as these will reveal that, while cultural heritage can be essential for our normative agency, it can easily also impede it, and to what extent this is so depends heavily 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 autonomy. 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.

# Chapter 5:

## The Harms of Cultural Heritage

### 5.1 Introduction

In this chapter I analyse the limits of a human right to cultural heritage. I have argued previously (Chapter 4) that cultural heritage, through its relevance to our individual sense of self, is of central importance to our individual normative agency. This forms the foundation of a human right to cultural heritage. Cultural heritage can be both a condition for individual agency and an expression of it. In the former case, cultural heritage is understood as a condition, through its connection to collective memory, for our making sense of who we are and who we plan to be (how we conceive of ourselves in the future). In the latter case, there is a human right to cultural heritage because cultural heritage is itself an exercise of normative agency.

Perhaps the greatest obstacle to establishing a human right to cultural heritage arises due to the complicated nature of heritage. The way I have explicated it in this thesis (Chapter 2) is as a symbolic form, i.e., a process of meaning-creation, through which we engage with the past as a way of making sense of our present and our presently conceived future. As such, cultural heritage at its foundation is about meaning attribution, rather than a concrete set of tangible or intangible objects. A crucial feature of heritage thus understood is its present-centredness; one of the explicit purposes of heritage is to help us make sense of our present (and our presently conceived future).

As such, cultural heritage is (re)constructed from the perspective of the present. Such construction often has a “flexible” relationship with historical facts. It is common amongst those working on cultural heritage to note the discontinuities between cultural heritage and history. History, to one degree or another, is restrained by the truth, whereas cultural heritage often need not be: “history strives to know as much of the past as well as possible; heritage is helped by imprecise impression and sketchy surmise. A modicum of knowledge will do, and the less explicit the better.” (Lowenthal 1998, 134)

One result of characterising cultural heritage in this way is that in addition to



encompassing objects and practices that we universally attribute positive value to, it also encompasses objects and practices of more contentious—and even negative—value. This follows directly from the understanding of cultural heritage as a creative enterprise. Some instances of cultural heritage are grounded in attempts to judiciously interpret the past. Consider some current attempts by various groups, within Europe and elsewhere, to come to terms with colonial practices and to celebrate those who fought against injustices that they entailed. An instance of this is the Sites of Memory project, developed by Historic England, an English heritage preservation institution. The purpose of this project is to educate the public about the buildings, memorials, and grave sites across England that “reflect the role of the slave trade in British history, and resistance to it.” (University of Nottingham 2007)

But other instances of heritage deliberately employ heavily romanticized pictures of the past and otherwise inaccurate narratives about the history of the cultural group(s) in question. Consider Vladimir Putin’s use of Russia’s cultural history in the doctrine of *Russkij Mir* (Russian World). *Russkij Mir* is meant to designate the totality of Russian cultural heritage and be the great common denominator of all regions that were once associated with it, both in its tsarist and the Soviet Union days, such as Ukraine, the Baltics, Poland, and Moldova. Despite claiming to celebrate cultural hybridity and multidimensionality, the culture and cultural heritage that *Russkij Mir* references is associated almost exclusively with ethnic Russians. It is based on a heavily simplified and romanticized historical narrative, according to which Russia, once home to various distinct communities unified by one great Russian culture, has been robbed of its rightful territories and power by the West. It is the duty of Russia to protect the *Russkij Mir*—Russian cultural heritage and the people who are associated with it—from outside influences, preserve its uniqueness, and ultimately return to its territorial greatness. Not only are constructs like *Russkij Mir* epistemically harmful in that they legitimize and perpetuate historical falsehoods, but they are deeply harmful morally and politically. Many have seen the recent Russian invasion of Ukraine as justified by the purported need to protect *Russkij Mir*, given their blatantly false accusations of physical and cultural genocide against Russian speaking Ukrainians in the Donbass and Luhansk regions. (B. R. Young 2022)

What makes cultural heritage such an important part of the way we navigate the world—that is, its ability to make our present circumstances meaningful—is also

something that allows it to be a powerful tool for harm. Such harms lay in the way we equip historical objects to respond to the purposes dictated by our present. Objectives like identity affirmation, drawing certain group boundaries and establishing power relations are all tasks in which cultural heritage figures prominently. While uses of cultural heritage in such contexts can (and often are) powerful tools for positive things—like community building and establishing a sense of meaningfulness and belonging—they can easily lead to marginalisation and exclusion and contribute to other oppressive and otherwise unjust practices.

I do not mean to suggest that such harms are somehow conceptually inherent to “cultural heritage”. Cultural heritage need not be harmful in and of itself, much in the same way as speech need not be; we may view them descriptively, simply as procedures of meaning creation and conveyance. What does make things like cultural heritage (and language, communication, etc.) harmful is what we end up doing with them, the contents that we imbue them with, the roles they play in our larger goals and plans. What makes theorising about cultural heritage and the way it can function as both a vehicle for good and harm especially tricky is just how numerous, subtle, and intertwined these goals and projects are—so much so that it may indeed be difficult to draw the line between morally acceptable and unacceptable uses of cultural heritage in general terms. In light of this, one of the goals of the following discussion is to argue for a form of normative particularism about the limits of a right to cultural heritage: aside from a very general and abstract identification of ways in which cultural heritage can be used in harmful ways, it is difficult (and perhaps even impossible) to talk about concrete limits of a human right to cultural heritage, as it is informed by its harms, in a decontextualised way.

In what follows, I start by presenting a taxonomy of ways in which heritage can be said to be harmful. I outline three cases, each of which designate a paradigmatic mechanism that underlies the wrongful uses of heritage: (i) in-group/out-group boundary drawing, (ii) embodiment of physical and psychological harms, (iii) cultural appropriation. As with any analysis of a phenomenon as complex and nuanced as heritage, real-life cases of cultural heritage and the harms they entail are more complex than this taxonomy might suggest. The lines that divide the three cases will not be as strict as this, with many instances of heritage having a combination of the elements from each of the categories.

Furthermore, in some instances, the harms associated with cultural heritage are intertwined with the exercise of other rights. For instance, in-group/out-group boundary

drawing is closely tied to rights to self-determination. The harms of cultural appropriation may be intertwined with a general right to participate in culture, rights to religion, freedom of expression, etc. Additionally, the rhetoric of human rights violations when it comes to harmful traditional cultural practices can itself cause harm, through its ability to facilitate oppressive ethnocentric narratives. These are just a few reasons why we need to be careful not to draw too strict boundaries when it comes to outlining the limits of a human right to cultural heritage. Such boundaries must be determined in the context of each individual case of the exercise of a human right to cultural heritage. But this is not to say that there is no value in providing a general assessment of the ways in which cultural heritage can be associated with harms. At the very least, the general overarching structure of such harms allows us to see the processes involved in heritage creation and the uses of heritage a touch more abstractly. My hope is that this will make identifying concrete cases of such harms and confronting them easier.

## **5.2 In-group and out-group narratives**

I have argued throughout the thesis that one of the roles of cultural heritage is to help us make sense of our present life and its circumstances. One way in which it helps us do this is by helping us establish and make sense of who we presently are. This is true of our identities both as individuals and, importantly, as members of particular communities to which we claim belonging and whose cultural heritage we adopt. This makes heritage an incredibly powerful tool for community building. In other words, cultural heritage is central in communal identity construction and through this, to facilitating an in-group narrative, a cohesion-building story that allows individuals to identify as members of the group.

But, in equal measure, heritage can work as a force of exclusion by helping to designate who does not belong to the community. When people who can claim to be relevantly connected to a certain instance of cultural heritage are considered as members of a given group (or vice versa: people who are members of a given group can claim the heritage of that group), this also means those without such a connection must largely be excluded. Consider how heritage can function as a symbol of ethnicity and, in turn, as a way to establish who can be considered a member of a particular ethnic group and who cannot. Part of what it may mean to be, say, an ethnic Croat is to claim a certain heritage

that is intertwined with that ethnicity—for instance, a historic connection (however distant) to folklore, religious practices, language and ways of speaking, social customs and perhaps even a certain overarching set of beliefs and norms. Lack of the relevant connection to such heritage often becomes a tool to mark difference and designate those outside the ethnic group.

Of course, the act of drawing ethnic, or any other cultural community boundaries need not itself be harmful, but it very quickly can become harmful. Consider cases in which cultural heritage is used as a symbol that designates difference and the (perceived) exceptionality of members of a given group and, in virtue of this, is used to establish superiority over non-members. Take objects of Confederate heritage and the groups that claim them as their patrimony as an example. Objects such as the Confederate flag, sculptures memorializing figures such as Robert E. Lee and Stonewall Jackson, and more intangible objects such as particular historical narratives and customs (celebration of Lee-Jackson Day, Confederate Heritage Month) all are symbols that distinguish those who belong to certain Southern US communities, in addition to white supremacist groups. They are seen as a source of pride and symbols that legitimize exceptionality and, within the narratives of some groups, even superiority over others. Such heritage can be incredibly harmful in its ability to function as an expression of racism, marginalization, and severe exclusion.

Notice that the issue with the case addressed above stems primarily not from the particular historical objects themselves but rather from issues surrounding the notion of cultural identity and identity itself more generally. That is, the problem with Confederate heritage is not that the historical objects themselves are independently harmful or otherwise problematic. Much as with any instance of heritage, without an accompanying explanation of its significance (e.g., its value as a work of art or its historical importance), an object like the Confederate flag is just a piece of cloth or a particular pattern. What makes it heritage is the meaning that some communities attribute to that object in their attempt to make sense of their present and the role that the object plays in connecting to a particular type of identity. Such identities can be explicitly exclusionary and

discriminatory, given the explicitly exclusionary and discriminatory rules that govern them.<sup>93</sup>

Of course, rules governing a particular identity can be relatively normatively neutral, therefore resulting in identities that are correspondingly (all other things being equal) harmless. Consider the rules one must follow to claim an identity of a lawyer. One might have to have a law degree, practice the law, perhaps belong to a certain legal association, and other similar things. All other things being equal, none of these rules results in an identity that is threatening to others or overly discriminatory in any morally weighty way. We can similarly imagine identities (and their corresponding membership rules) that are positively good. Consider an identity of being a loving partner and/or parent, or that of being a caring and engaged member of an egalitarian community.

Therefore, identities and the rules that govern their membership can and do exist on a spectrum with regards to their value. But, despite this, a characteristic feature of the very notion of identity is its function as a marker of difference. The purpose of the rules that govern membership in an identity group is to set boundaries for belonging to the group. Hence identity, to a large extent, is about establishing and facilitating difference and, in this respect, entails some level of exclusion.

Some instances of exclusion, of course, are less harmful than others. In some cases, such harmfulness comes down to *the particular way* in which the exclusivity is set up. Consider the lawyer identity again: it is exclusionary in that rules governing it determine who can belong to the group and who cannot. But such exclusion is contingent: there is nothing that would necessarily prohibit one becoming a lawyer and, hence, being able to claim such an identity. By contrast, racist social identities are necessarily exclusionary and position other racial groups as subordinate to them, in virtue of their exclusivity, in a way that an identity of a lawyer would not.

### ***5.2.1 Harms of in-group and out-group narratives***

While identity claims, through their ability to determine the features that differentiate group members from non-members, can be a source of explicit exclusion

---

<sup>93</sup> For instance, to claim the identity of a white supremacist, one arguably must follow the rules governing that identity, such as harbouring racist views about the superiority of the white race over others.

and marginalisation, this is by no means to suggest that all identities are harmful, due to their functions as markers of difference. First, cultural diversity, a natural result of this feature of identity, is commonly recognized as not only of crucial importance to humanity, but also as intrinsically valuable (Musschenga 1998). What is more, the difference that identity necessitates can be an extremely positive force. For example, it can function as a source of cohesion for oppressed communities, which unifies people and strengthens their ability to mobilize to fight oppressive forces. So, clearly, the inherent exclusionary nature of identity and, in turn, the cultural heritage that grounds a particular identity need not be by themselves generative of harms.

What do generate such harms are the ways in which such exclusivity works to reinforce sentiments such as superiority and contempt for those who do not belong to one's identity group. Notice how this is at work in instances of harmful identities such as that of the white supremacist. Through emphasizing the differences between people who belong to their identity group and those who do not, they establish a dangerous sense of superiority that leads to harmful practices such as discrimination, oppression, and dehumanization.

But we should be cautious not to focus only on those identities (and the cultural heritage associated with them) that have been associated with overt harms, such as an identity of a white supremacist. Similar strategies are at work with other, seemingly more benign, instances of using cultural heritage to establish boundaries between in-groups and out-groups. Such strategies and their harms can be more elusive, but if we only focus on identities and instances of cultural heritage associated with overt harm, we risk ignoring a variety of more subtle ways in which cultural heritage can contribute to various harms.

Consider cases of nation-building, a clear exercise of establishing in-group and out-group narratives. Ways in which cultural heritage is utilised in such contexts are excellent illustrations of cultural heritage's dual potential for both benefit and severe harm. On the one hand, using cultural heritage to build a national identity can facilitate the much-needed solidarity and a sense of belonging, both of which are crucial for state-building and participation in politics (Smith, et al. 1998, 1). But severe problems of exclusion arise when the identity in question is built "on a form of imagined community that reifies the importance of national or ethnic boundaries to the detriment of the wider political community" (ibid.). This seems to primarily happen through nation building that

is primarily or exclusively based on ethnicity, as opposed to civic participation.<sup>94</sup> This problem has been especially evident in nation-building efforts of post-Soviet countries with large Russian-speaking minorities. Consider the case of the Baltic states. All three of the Baltic states' independence movements were ethno-nationalist, grounding the nascent states on distinct cultural myths about ethnic Lithuanians, Latvians, and Estonians. As Alijeva notes, in all the Baltic states "the Russian-speaking minorities are perceived as a part of a complex social problem that results from [the Baltic states'] recovering from years of Soviet oppression of the Estonian, Latvian and Lithuanian culture and language" (Alijeva 2017, 486). Considering this, all three of the countries, during the nation-building phase, adopted a range of policies privileging the ethnic majority populations (ibid.). This resulted in the marginalization of Russian-speaking communities, and their being perceived both by themselves and others as permanent outsiders.

Cultural heritage's flexible relationship with historic truth makes it an especially useful tool in building in-group narratives centred around such imagined communities. Therefore, it is no surprise to find it front and centre in such processes. It is common to identify several such processes through which an in-group narrative of this variety is built. Smith et al. identifies three such strategies, *essentialising*, *historicising* and *totalising* (Smith, et al. 1998, 15). While the authors' focus is not on ways in which cultural heritage is employed in such strategies, its central role in such processes is evident. Essentialising involves identifying a certain set of features that all the members of the community will share. Referring to a shared cultural heritage that is correlated with a highly romanticised and singular picture of history of the region that the community in question is based in is one of the central vehicles for such essentialisation.

Cultural heritage, primarily due to its ability to creatively bend historical fact, plays a similar role in historicising: "rediscovering an ethnic past or selective history, especially of a 'Golden Age' that can act as an inspiration for contemporary problems and needs, but it can also be linked to rediscovering or inventing national heroes" (ibid.). Objects of cultural heritage, either in tangible or intangible form, serve both as a vital

---

<sup>94</sup> We must be careful here not to draw too stark a distinction between the two types of nations. As Tolz notes, "civic nations (communities of participating citizens) and ethnic nations (communities bound together by common language, culture and history) are only ideal types, which rarely exist in pure forms, and even civic nations are usually strongly connected with earlier ethnic communities." (Tolz 1998, 993)

connection with and the embodiment of such a “Golden Age”.<sup>95</sup> And lastly, cultural heritage plays a prominent role in totalizing, by which relative differences between individuals in the same region are turned into absolute ones (ibid.): “individuals are thus collectivised and ascribed to or squeezed into particular categories: one is either [Lithuanian] or Russian; one cannot be both.” (ibid.). Cultural heritage, often in the form of language and/or religion, in such processes is used as a marker of difference in accordance with which such categorization is possible.

All such uses of cultural heritage in the context of nation building have historically contributed to harmful marginalization of national minorities. Through creating a politically motivated and often historically inaccurate and/or incomplete narrative determining who belongs to the national group and who does not, the in-group legitimizes the exclusion of the out-group. As a result, what may appear as a relatively benign instance of cultural heritage use in an emerging nation-state can very quickly turn out to have deeply marginalizing effects on members of its own community.

As I have emphasised before, this discussion is not meant to indicate that cultural heritage is harmful to the extent that it cannot ever be an object of protection, by human rights or any other means. Cultural heritage’s relevance for our well-being is evident, despite its uses for, among other things, questionable political ends. It is an integral feature of our making sense of our lives, both as individuals and as members of distinct cultural communities. However, what this does bring to our attention is the crucial importance of being critical to the various narratives that employ cultural heritage and to the discontinuities between cultural heritage and historical fact.

---

<sup>95</sup> Consider the case of post-Soviet Lithuania, to which Smith et al. refer frequently in their study: “[F]or Lithuanians, a valorised epic past is configured by idealised images of a harmonious pre-colonial social order of Lithuanians running their own state (either the medieval Polish-Lithuanian Commonwealth that at its apogee stretched from the Baltic to the Black Sea, or the more recent inter-war (1918-40) Lithuanian state), replete with an overly romanticised view of the Lithuanian peasantry and their folk-rural culture.” (ibid.)



### 5.3 Heritage as justification for harms

Another set of cases relevant to harmful uses of cultural heritage involves instances in which cultural heritage (or culture more broadly) is used as a tool to gloss over or cover up various forms of injustice. Here, unlike in the previous case involving in-group and out-group narratives, the problem is not cultural heritage's potential for exclusion; rather, the harms stem from the status of cultural heritage as a protected enterprise. The thought is that practices that are closely connected to various forms of injustices and other harms can be masked as cultural heritage and, through this, be legitimised as something that needs to be protected as opposed to abolished. Rights to culture and cultural heritage have been used as an argument against criticisms of acts such as female genital cutting, child marriages, "honour killings", denial of political participation, and other similar cases of human rights violations.

The argument here usually is that a particular nation (or a subnational community) has a right to their culture and, hence, historic cultural traditions. Since the criticized acts belong to the cultural heritage of that particular group, they are an important aspect of the group's existence that ought to be preserved. To insist otherwise would be to push a particular form of Western hegemony (and, hence, an imposition of a foreign set of values) on the group in question. This strategy seems to have become an especially prominent and rhetorically powerful tactic employed by various nation states to push back against human rights that address women's interests (Desai 1996, 112).

These cases are quite complicated precisely because often the worries expressed in support of each side of the debate contain at least a seed of truth. On the one hand, it is difficult to deny the various ways in which cultural heritage can be used to justify practices that are utterly detrimental to one's well-being and that themselves constitute human rights violations. Consider ways in which certain norms regulating our private lives, such as who we choose to be in a couple with, what is appropriate for, say, our gender and what is not, due to their status as an important aspect of our cultural traditions, are used to oppress those who fail to comply with them. Similarly, consider the overt and often excruciating physical injuries that some cultural heritage practices, such as female genital cutting, foot binding and the like, can cause.

But one must also not ignore ways in which cultural heritage is co-opted to further oppress already marginalized communities, especially those in the global south,

by invoking colonialist tropes of savagery and civilization. In these instances, the strategy is reversed. Instead of arguing that cultural heritage is something that must be preserved, one argues that some cultural heritage is an instance (and often proof of) the barbaric nature of members of a given cultural group and that there is an obligation to civilise them by eradicating such heritage and replacing it with other, more enlightened practices, where such practices are almost exclusively Western. Lila Abu-Lughod in *Do Muslim Women Need Saving* presents an illustrative case of precisely this use of cultural heritage (Abu-Lughod 2013, 25-74). Abu-Lughod paints a nuanced picture of how the various Muslim cultural practices governing gender and marriage that need contextualising and an interpretation sensitive to various complexities of the lives of people practicing them, were bluntly co-opted by various politicians in the United States as part of the political rhetoric that justified the interventions to Afghanistan as a way to “save Muslim women”.<sup>96</sup>

The reasoning behind this brings to mind a familiar colonialist narrative of the civilising mission. By this narrative, the hegemonic colonialist states sought to justify their exploitation and oppression of the colonized by reducing them to the uncivilized, where the mark of such “uncivilisedness” were various cultural practices that were significantly different and, therefore, unpalatable to the Westerners. The perceived horror of such practices and the need to eradicate them was one of the motivations for continued colonisation and/or intervention in the first place. Considering these parallels, it is not difficult to understand the uneasiness of numerous academics and NGOs when it comes to blanket criticisms of cultural practices of non-Western states. This perhaps also explains in part why the otherwise politically manipulative rhetoric that emphasizes the cultural rights of states in light of numerous human rights violations can be so effective.

Of course, this is not to say that just any cultural practice or instance of cultural heritage, whatever its effects, ought to be left unchallenged. But we need to be cautious

---

<sup>96</sup> Consider this particularly telling quote from the then First Lady of the United States Barbara Bush’s radio address: “Because of our recent military intervention in Afghanistan, women are no longer imprisoned in their homes. They can listen to music and teach their daughters without fear of punishment... The fight against terrorism is also a fight for the rights and dignity of women” (quoted in Abu-Lughod, *ibid.* 32).

in our reconstruction of concrete ways in which cultural heritage is harmful. To do this, we must scrutinize the concrete cases that seek to portray heritage in both overtly positive and negative light and be sensitive to the many other factors that might be at play in such an assessment. Responding to these concerns effectively requires an extremely careful balancing of various competing considerations, both moral and political.

## **5.4 Appropriation and cultural theft**

### ***5.4.1 Cultural appropriation***

Finally, cultural heritage figures prominently in the debates regarding cultural appropriation. The term “cultural appropriation” can very broadly be defined as acquiring (either by borrowing, legitimate transfer or forceful taking) a cultural community’s cultural practices (or elements of such practices) and placing them in a new cultural context. It can be both relatively benign and overtly harmful, and the line between such cases is often difficult to establish. In contexts of cultural appropriation, objects of cultural heritage often appear as objects of commodification. In such cases, the cultural heritage of a given group is taken by another group and treated as a commercial object. This happens with both tangible and intangible cultural heritage. As examples of the latter consider various Western companies incorporating indigenous art motifs for branding purposes. Western artists borrow musical ideas from various marginalized cultural communities and integrate them without acknowledgement in their music. Or similarly consider the various ways in which the traditional knowledge of indigenous communities is incorporated in Western medicinal practices, production of consumer goods, etc.

Characteristic examples of the commodification of tangible heritage revolve around the trade of cultural artifacts as objects of art, such as the practice of illegitimate selling of various Native American communities’ cultural artifacts as antiques. Often these objects have deep spiritual significance for the communities in question and once they are taken out of their original context such significance is lost, potentially resulting in a sense of loss of culture and control of it. Some instances of commodification of heritage in this sense need not be explicitly harmful. Consider various transfers of objects

of heritage from members of a given community to those outside the community, that are done voluntarily and in accordance with the guidelines that the transferring cultural group has established. An example of this is selling traditional ingredients or producing cookbooks on culinary heritage. Not only can this be financially beneficial for the community in question, but such practices also serve as a tool for appreciation, recognition and greater respect for the often times marginalized cultural communities.

Another characteristic and controversial case involving tangible objects of heritage and their appropriation involves museums collecting and displaying objects of art that do not belong to the cultural group associated with the museum. Some have raised the question of whether it is *ever* acceptable for institutions such as Western art museums to collect and display artifacts produced by and for non-Western cultures (Gaskell and Eaton 2009). The worry is that given the power imbalance between Western countries where the museums are located and the source countries representing the culture associated with the displayed objects, as well as the often-wrongful acquisition of such objects, the very practice of displaying such cultural objects is morally suspect.

A further pressing consideration in cultural appropriation's connection to cultural heritage concerns not what is done with objects of heritage, but rather how cultural heritage itself is produced. As I have argued before, cultural heritage can be understood as something that is closely linked to a process of meaning creation. We use artifacts from the past as means of making the present meaningful. In virtue of this focus on the present, cultural heritage is a creative and dynamic enterprise that is ever-changing in light of the different realities that members of various cultural communities find themselves in. Much as in the case of culture in general, borrowing from other cultures and/or incorporating their cultural practices into our own is an integral part of heritage creation.

Again, at times such borrowing can be quite controversial and, ultimately, harmful. Some of these cases involve individuals who claim membership in groups that they otherwise would not belong to. Recall the controversial case of Rachel Dolezal, a white American woman passing as an African American. Integral to her doing so was picking out the various historical cultural practices of African American communities and claiming them as her cultural heritage. Similar concerns can be raised about instances of heritage that are seen as heritage of all humanity, in addition to one particular community. Characteristic examples of such heritage are UNESCO World Heritage sites.

Similar issues arise here when the heritage in question is associated with marginalized or otherwise oppressed communities and is claimed by mostly Western institutions and tourists. To be clear, the worry here is not that an object of heritage cannot be seen as serving two purposes, both as an instance of local cultural heritage and at the same time as an instance of cultural heritage belonging to all humanity. The issue here seems to me to come down to who gets to control and have primary access to said cultural heritage.

But questions regarding cultural appropriation can often stir controversy. Some have argued that cultural appropriation is a natural part of how we participate in culture and its progress and can be a positive force facilitating cultural dynamism (J. O. Young 2008) (Rogers 2006) (Heyd 2003). In light of this, there have been calls to cast “cultural appropriation” in more neutral light. Without denying that it can be harmful, it may nevertheless be useful to leave space for a more neutral use of the term, which designates a process that we notice in an evolution of any culture, by which one culture integrates elements of another culture (Matthes 2018b). Arguably, this is how cultural exchange works. Rarely do we, as members of communities, create something entirely anew; oftentimes our cultural artifacts can be traced back to a long line of practices and customs, many of which are not ours by ancestry.

Another important source of contention is the uncertainty regarding what precisely the wrongfulness of cultural appropriation comes down to. This is not to profess scepticism regarding cultural appropriation’s wrongfulness. I think this would be a sign of narrowmindedness and lack of sensitivity to the struggles that various communities have to face when it comes to misuses of their culture. Regardless, more needs to be said to flesh out the relationship between cultural appropriation and its effects on the communities from whom the cultural objects are being taken and the communities who are taking them. Furthermore, we need to explicitly address ways in which cultural appropriation involving cultural heritage is wrongful to relate considerations involving cultural appropriation to the limits of a human right to cultural heritage.

#### ***5.4.2 The wrongs of cultural appropriation***

There are various different ways to cash out what the wrongfulness and the harms of cultural appropriation come down to, not least because cultural appropriation is

a complex and multi-dimensional phenomenon, and our account of its wrongfulness ought to match such multi-dimensionality. In what follows, I will focus on three prominent accounts of such wrongfulness established in the literature on cultural appropriation. Each of these accounts brings to the fore a distinct feature of such harm: (i) *profound offense*, (ii) *facilitation of oppression*, (iii) *violation of group privacy and agency*. I do not mean to suggest that any of these three features ought to be prioritized over the other two when it comes to addressing the wrongs of cultural heritage. Rather, I think that each captures a relevant dimension of the wrongfulness of various instances of cultural appropriation.

A prominent way of conceptualising the wrongfulness of cultural appropriation is by appealing to the notion of offense. For instance, a report on the Australian Aboriginal cultures says that it can be “inappropriate, derogatory, culturally offensive or out of context” (Young and Brunk 2009). Similarly, National Summit in British Columbia “objected to certain paintings on the grounds that they are ‘highly offensive, demeaning and degrading to First Nations people’” (ibid.). In light of this, James O. Young has proposed treating the wrongfulness associated with cultural appropriation in terms of the concept of *profound offense* found in the work of Joel Feinberg. According to Feinberg, profound offense differs from ordinary offense precisely because it touches more deeply than ordinary offense might. “Profound offense strikes a person’s core values and a sense of self” (ibid.). Therefore, profound offense is not really about offense in and of itself, but rather about disrespect (and the feeling of disrespect) for one’s identity and core values (ibid.). It seems plausible that the notion of profound offense captures what is going on in at least some cases of cultural appropriation. Consider the feeling that someone may have if the religious artifacts that are central to their cultural and religious identity were used, without consent, as commercial objects. Here, at least in part, the offense comes from an oftentimes wilful failure to recognize the crucial importance of such objects to one’s cultural identity, which often translates to deep disrespect.

Another dimension of the harms of cultural appropriation has to do with the broader conditions of oppression that cultural appropriation is taking place in. Erich Hatala Matthes argues that there is no *sui generis* wrong that is involved in cultural appropriation. That is, when wrongful instances of appropriation occur, the wrongness of such acts relies on already established inequalities (Matthes 2019, 1004-1005). In other words, what accounts for harmful instances of cultural appropriation are the underlying

conditions of oppression faced by the group whose heritage is appropriated. According to Matthes:

[t]he wrong of cultural appropriation is rooted in imbalances of power. Whether a particular case is most saliently understood as one of silencing, exploitation, misrepresentation, or offense, what ultimately makes particular instances of cultural appropriation wrongful, and thus what grounds objections to them, is the way in which they manifest and/or exacerbate inequality and marginalization. (ibid., 1004)

This account of the wrongfulness of cultural appropriation provides an elegant explanation of the common intuition that wrongful acts of cultural appropriation target only the members of marginalized communities and not those of culturally dominant groups (ibid.). If oppression is what accounts for the harms of cultural appropriation, then it follows that those who are not oppressed then cannot have their culture harmfully appropriated. In fact, as Matthes argues, in cases where an oppressed community is adopting cultural practices of the dominant community, it is more accurate to call this cultural assimilation (ibid.).

A final source of wrongness of cultural appropriation is the violation of the cultural group's agency via a violation of their privacy. C. Thi Nguyen and Matthew Strohl defend a view according to which the wrongs of cultural appropriation at least in part reduce to violations of group intimacy (Nguyen and Strohl 2019). They provide an analogy to illustrate this point: consider how the wrongs of reading love letters of a couple would be at least in part constituted by the violation of their privacy. It is only permissible to do so if both members of the couple have given their consent to share them with others. What is more, to read them without their explicit consent is not only violating their privacy, but also violating their agency as a couple (ibid., 982). Nguyen and Strohl argue that something akin to this is going on in the case of cultural appropriation. The group to which the cultural objects in question belong have established relationships of closeness that are largely determined by their shared cultural practices and said cultural objects. To take such cultural practices and objects from them without their explicit consent is to violate the group's privacy and, correspondingly, agency.

I do not mean to suggest that any of these approaches to the harms of cultural appropriation do not face potential worries that their proponents will have to answer (I address some such worries below). However, I think that taken together they do a good

job in capturing our general intuitions about the wrongful instances of cultural appropriation.

## 5.5 The limits of a right to cultural heritage

I started this chapter by claiming that a taxonomy of the harms of heritage could help us determine the limits of a human right to cultural heritage. One simple way in which outlining harmful instances of it ought to do so, is by helping us to determine what to exclude from protection. The reasoning behind this is trivial: if something causes overt harm, its protection ought to have caveats built in that would guard against such cases. However, what makes the situation (and, in turn, determining the limits of a human right to cultural heritage) more complicated is that many of the types of harmful cases of heritage outlined above have instances that are not uncontroversially harmful. Of course, some instances of the taxonomy provided above *are* overtly and uncontroversially harmful, such as cultural heritage that is meant to be a tool in establishing racist and other similarly harmful narratives, or cases involving cultural heritage that itself causes harm, such as cruel and unusual punishments, female genital cutting, etc. Similarly, some cases involving cultural appropriation—especially when explicit cultural theft is at play—are clearly harmful and unjust.

But arguably the harmfulness of equally many instances of cultural heritage, as presented by the taxonomy above, is far less clear and requires careful and heavily contextualised analysis of cases which purport to involve said harms. What is more, the harmfulness of a particular instance of cultural heritage is not the only criterion by which we should judge to what extent that instance of heritage is permissible. Often these cases involve a variety of competing interests that themselves give rise to rights claims. And which rights ought to be prioritised when they are in conflict is a difficult question that, again, likely must be contextualised and decided on a case-by-case basis.

### 5.5.1 *Taxonomy revisited*

All the complications indicated above arise in each of the types of harmful instances of cultural heritage addressed here. A particularly good illustration of this involves instances of heritage that are said to directly cause explicit harm, such as female



genital cutting. Recall how easily narratives about harmful cultural heritage can be used to justify things like questionable military intervention and further exploitation of already oppressed communities. Equally so, historical cultural practices that are indeed quite physically harmful often are justified by reference to a cultural group's heritage—in this way pitting the rights of individuals to not be treated in cruel and degrading ways against cultural rights of communities, in addition to rights of self-determination. What makes cases like these particularly difficult is that the harmfulness of instances of cultural heritage come on a spectrum. Some cases are easier to decide than others, given the explicit and urgent harms that they involve. Consider here such practices as infibulation or honour killings. While this is not uncontroversial, I find it difficult to see how commitment to cultural rights here can prevail over such explicit and radical violations of rights to bodily integrity.

But other cases of cultural heritage, while still potentially involving some direct harms, will be much less clear cut. Consider certain historical cultural practices that are often said to reinforce particular power hierarchies, harmful gender norms and the like.<sup>97</sup> When judging some such cases, we need to be extremely vigilant about the biases and misconceptions we may have about the cultures in question. Consider how the practice of veiling can be seen as a paradigmatically problematic instance of cultural heritage of various Muslim communities. It is often argued that such a practice overtly oppresses women, precisely due to its functioning as a symbol that reinforces a particular hierarchical structure, where women's freedom and agency are severely diminished. Likely there are individual cases in which this is the case, especially when such cultural practices are forced on unwilling individuals. But more often than not the situation is much more complicated, and judging it and the harms involved in it appropriately requires paying close attention to the contextual features and having appropriate familiarity with the cultural group and the practices in question.

For instance, a careful consideration of cases involving veiling will often reveal a rich picture of various competing interests and considerations, some of which might support conclusions that contradict one's initial assessment of the case. Consider how

---

<sup>97</sup> Susan Moller Okin (1999) has famously argued that cultural rights can often be oppressive to women precisely because they justify such harmful actions as instances of culture one has a right to.

veiling, a cultural practice that is perceived as agency diminishing, can indeed be seen as an expression of Muslim women's agency.<sup>98</sup> In cases such as these, insisting that the women are in fact and unbeknownst to them deeply oppressed and in need of saving by banning such "harmful" instances of their cultural heritage is at risk of reinforcing an old but persistent colonialist narrative.<sup>99</sup>

Similar issues that emphasize the complicated nature of the harms of cultural heritage will arise with potentially harmful instances of heritage that I have classified as belonging to the first category of the taxonomy provided above, where cultural heritage's harm is traced to its use as a tool for exclusion through establishing in-group and out-group narratives. Recall that I have argued there that while there is potentially nothing overtly wrong with establishing boundaries between various cultural groups, the problematic cases are generated by harmful claims of superiority and exceptionality. I have intentionally left open the question of what constitutes a harmful sense of superiority and exceptionality. I do not have the space here to address this complicated question appropriately, so I have to leave it for further research. But it is enough for my purposes here to emphasise that exactly how we will specify what instances of exceptionality are harmful plays a crucial role in determining how considerations such as these should limit a human right to cultural heritage.

The problem is that much like we can unproblematically identify cases of overtly harmful superiority (such as was the case with white supremacist communities), it seems fairly uncontroversial that some instances of the feeling of exceptionality are rather benign. Consider instances of perceived exceptionality (and perhaps even superiority) that come in the form of pride of one's history and cultural heritage, where such heritage is associated with moral value. Take as an example someone being proud of their British heritage due to the abolition of slavery throughout the British Empire in 1833. In cases such as these, as long as the historical complexity<sup>100</sup> of this historical event is understood

---

<sup>98</sup> See (Zimmerman 2015).

<sup>99</sup> Some authors have argued that the very question of agency in such contexts already presupposes the harmful colonialist narrative about the "oppressed woman". See (Schlikoglu 2018) and (Abu-Lughod 2013).

<sup>100</sup> For instance, as long as those proud of this piece of heritage see it in a larger historical context of the time, i.e., one that was rife with other instances of exploitation and oppression across the British Empire.

and it is not taken as something that establishes that racism is not an issue in the United Kingdom, cultural heritage may be a source of pride and exceptionality in way that does not seem harmful to others, even though it does facilitate a particular ingroup narrative of Britishness that is inevitably exclusionary.

Cases involving cultural heritage that is harmful due to its connection with cultural appropriation are perhaps the most complicated when it comes to outlining the boundaries of a human right to cultural heritage. The complications here are compounded by the controversial status of cultural appropriation itself. As Nguyen and Strohl note, there is a tendency in the literature to reduce questions regarding the moral status of cultural appropriation to an unhelpful and misleading binary. On the one hand, cultural appropriation gets treated as a *universal entitlement*, that is:

[t]he view that anybody may appropriate anything they like from other cultures within the boundaries of property law, including musical styles, hair styles, and religious dress. Defenders of this view often cite the value of cultural interchange and freedom of expression and claim that more restrictive views are stifling to art, speech and culture. (Nguyen and Strohl 2019, 982)

On the other side of the spectrum are views that commit themselves to *universal restrictiveness* regarding cultural appropriation:

The view that cultural appropriation from marginalized groups is impermissible. Defenders of this view often cite the vulnerability of marginalized groups and the fact that appropriation disproportionately benefits dominant groups. (ibid.)

I agree with Nguyen and Strohl that both of these positions are unhelpful and that we need to find a middle path between them, especially if we want to account for cases in which cultural heritage appropriation constitutes a case limiting a human right to cultural heritage. I have suggested above that one way to do this is to be precise about where exactly the harm of cultural appropriation lies and briefly described three accounts of harms that cultural appropriation entails—i.e., profound offense, oppression and violations of group intimacy and agency. While each of these accounts identifies a relevant feature of the wrongfulness of cultural appropriation, all of them must deal with further complications, especially if we seek to apply them as limits to a human right to cultural heritage.

Consider cases in which the act of cultural appropriation amounts to such deep disrespect of someone's identity and core values that it causes profound offense. It is questionable whether offense, even profound offense, is something that, could alone be sufficient for limiting someone's human rights. This is so, because, all other things being equal, while offending people should be avoided, there is a myriad of other considerations that might make the offensive act in question nevertheless independently valuable, "such as its social value, the value of freedom of expression, the time and place of the act, the extent to which it is tolerated by group members, and how reasonable the offense is" (Matthes 2018b). Of course, this is not to say that avoiding deep disrespect to someone's identity is something that is not important, or something that, in principle, could not be a limiting consideration for a human right to cultural heritage, but that each case involving profound offense will need to be judged individually and in the context of a variety of other claims generated by competing rights, such as freedom of expression and freedom to participate in one's cultural life.

Further objections could be raised to group agency accounts. Recall that, according to such accounts, what makes cultural appropriation wrong is that it amounts to violations of the cultural group's privacy. What one needs to do to avoid such a wrong is to get consent from the group to use the cultural object. Without such consent, the violation of privacy also translates to the violation of the group's agency. One way in which this could inform the limits of a right to cultural heritage is by making it explicit that cultural appropriation could constitute a human rights violation of members of a cultural group to which the cultural object belongs, unless they explicitly gave consent to that object being used by another group. Additionally, this picture would imply that one must get consent from the cultural group to claim something as their cultural heritage. This would be especially pertinent to cases involving self-identification with a particular group.

But who exactly from the cultural group in question has the authority to give consent to the sharing of their cultural heritage? This is not an easy question to answer and Nguyen and Strohl are careful to acknowledge it. They distinguish between agential and sub-agential groups, where the former are meant to have a robust procedure at arriving at group decisions, while the latter, although having "some animating basis for cohesion", do not have such a procedure (ibid., 996). Small cultural communities that have designated representatives or established institutions that could grant the relevant

consent are agential groups. While large cultural communities—e.g., the Latinx community in the United States or the Caribbean diaspora—are sub-agential groups. Such groups in principle cannot give consent because they lack agential powers.

This is a big problem for a view of the wrongs of cultural appropriation that traces such wrongs to violations of groups agency. Nguyen and Strohl provide two answers to this concern. First, if a large enough number of the members of the cultural community in question is against an instance of use of their cultural heritage, we can approximate this as them not giving consent (ibid. 998). But with truly big and diverse cultural groups such approximation is going to be difficult to perform and, in such cases, we might judge the wishes of a group as indeterminate (ibid. 999). What this tells us about the limit of a human right to cultural heritage in such cases is that, again, we must be careful to tend to the circumstances of each individual rights claim. With smaller scale communities that have explicit agential powers one's right to the cultural heritage in question might be restricted by such a group not consenting to use of their cultural heritage. This then will work similarly to property rights claims: one does not have a right to use somebody else's property, all other things being equal, without their consent. But with sub-agential communities, as Nguyen and Strohl note, the account will not yield such clear, pre-settled answers (ibid.).

Accounts of oppression seem to come closest to providing a better-defined limit to a human right to cultural heritage. Unlike profound offense, oppression could uncontroversially yield limits of rights. If cultural heritage is genuinely contributing to oppressive practices, or itself at times constitutes such practices in cases of cultural appropriation, as Matthes persuasively argues, then it is difficult to see under what circumstances this would not constitute a limit on a human right to it. Consider a case where a piece of heritage is associated with both a particular subaltern, historically oppressed community, and a much more powerful state. Assume that the object in question is in the possession of a subaltern community and the state takes it over, justifying this by the need to fulfil the human right of its citizens to, say, have access to said object. It seems that it would be uncontroversial to call this act theft and argue that the state is in the wrong. This is so, in no small part, because it would constitute an act furthering the oppression of the subaltern community.

Recall that I suggested something similar when discussing the oppressive identities of communities that claim harmful superiority and exceptionality over others. There too,

the fact that such identities are oppressive to others is what excludes cultural heritage that facilitates such identities from the human right to cultural heritage. In the case of cultural appropriation, cases in which cultural heritage appropriation contributes to oppressive practices may equally not be protected under the human rights picture. But applying this account of the limits of a human right to cultural heritage is also not without its issues. Oppression is often presented as a “form of injustice that occurs when one social group is subordinated while another is privileged” (E. Taylor 2016, 520). However, such a broad characterization of it can miss its multidimensional and intersectional nature. Oppression inevitably touches many groups at once and it is not always straightforwardly clear how different cases involving cultural appropriation in the context of oppression ought to be measured against one another.

Consider cases in which harmful cultural appropriation has occurred between two oppressed communities as in the case in which several Inuit singers, including Kelly Fraser and Tanya Tagaq, accused a Cree singer, Connie LeGrande, of inappropriately incorporating Inuit throat singing in her work (Cecco 2019). It seems that here simply saying that oppression by a dominant group is what accounts for the wrongness of this particular act, and in virtue of this it should be considered a limit on a human right to cultural heritage, is getting things wrong. While the larger context of oppression might contribute to how cultural borrowing is done, even amongst those who are themselves oppressed, it does not seem to account for all issues involving appropriation in this case. At the same time, it would be wrong to conclude that harmful cultural appropriation could not have occurred here simply because the person accused of appropriation themselves belongs to a marginalized group.

What cases such as these suggest is that there are no easy answers when it comes to outlining limits to a human right to cultural heritage, based on concerns regarding cultural appropriation. This should not surprise us. In fact, given the complexity of uses of cultural heritage, “social life and the degree of oppression and injustice that pervades the world today”, as Nguyen and Strohl accurately note, we should be suspicious of theories that offer a clear and easy way “out of this obvious tangle” (ibid.). Considering this, each of the authors mentioned above is cautious to note that cultural appropriation is a complex phenomenon that does not lend itself easily to constructing an overarching theory that would explain its harms—and correspondingly outline the limits of a right to cultural heritage—in a neat and all-encompassing fashion. Arguably, to try to do so

would be a mistake that would mischaracterize the phenomenon by oversimplifying it. It is likely, therefore, that the best we can hope for when it comes to providing the limits of a human right to cultural heritage is a piecemeal theoretical picture that is strongly guided by the context in which the rights claims arise.

## 5.6 Conclusion

Cultural heritage can have both robustly positive and negative value associated with it. This dual nature complicates the picture of a human right to cultural heritage and makes identifying ways in which heritage can act as a detrimental force on us and, through this, establishing the limits of a human right to cultural heritage, a pressing matter. While I have cautioned against wholly decontextualized determinations of the limits of a human right to cultural heritage, I have also outlined the general ways cultural heritage can come to be harmful. Cultural heritage can be a force for exclusion, through its role in establishing in-group and out-group narratives, it can justify oppressive practices, and be a tool for cultural appropriation. Such processes are integral to the way we utilize cultural heritage. While, arguably, not all instances of the harms addressed here are equally detrimental, cases of heritage that explicitly contribute to marginalization and oppression are likely unavoidable.

This is not to suggest that the presence of harms associated with an instance of cultural heritage automatically excludes it from the human right to cultural heritage. Cultural heritage is, by nature, a complicated phenomenon and it is crucial that we be as sensitive as possible to the nuances that are involved in both what we take cultural heritage to be and the practices that surround it. The possibility that we may have a human right to something does not mean that the object or an activity cannot be harmful in some contexts. Consider canonical human rights such as rights to political participation, freedom of speech, rights to religion, just to name a few. All the activities and objects that such rights defend can lead to deeply harmful practices: rights to political participation can lead to the formation of racist ideologies, freedom of speech to incitement of genocide, rights to religion to violent radicalism. But one's first instinct is usually not to reject their legitimacy, but rather to construct as accurate as possible a

picture of what is at stake, taking these harms to inform the limits of the corresponding rights.



## Chapter 6:

# Duties to Protect Cultural Heritage

### 6.1 Introduction: Human rights and duties

It is common to note that rights are closely tied to duties. How precisely the relationship between rights and duties ought to be fleshed out is a matter of debate (Feinberg 1966), but for the most part, it is often taken to mean that (i) rights imply duties; (ii) rights are bounded by said duties—violating a right requires violating a correlative duty. So, the justification of a certain right can be said to hinge on the plausibility of the duties that are associated with them (Lyons 1970).

Amartya Sen, reflecting on the necessity of providing a conceptual foundation for human rights, identifies the question of human rights' correlative obligations as one of the central ones to be answered before such a foundation can be given (Sen 2004). The danger in too strong a rhetorical emphasis on rights may distract one from an equally, if not more, pressing set of questions regarding the duties such rights will generate (Feinberg 1973) (O'Neill 2005). Gandhi, though not a sceptic of human rights, famously seems to have expressed a version of this worry. When in 1947 asked by Julian Huxley, the then director-general of UNESCO, to contribute an essay to a collection of philosophical reflections on human rights, Gandhi declined, emphasizing the priority of the question of duties to that of rights (Moyn 2016).<sup>101</sup> He could even be seen as suggesting, somewhat controversially, that we only gain rights by performing their correlative duties: "I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus, the very right to live accrues to us only when we do the duty of citizenship of the world" (quoted in (Moyn 2016)).<sup>102</sup>

---

<sup>101</sup> For more on the importance of emphasizing duties correlative with human rights see (Goodale 2018, 191-205).

<sup>102</sup> As Moyn notes, such a rejection should not have come as a surprise to Huxley: "as far as *Hind Swaraj* (1909), his masterpiece in political theory, Gandhi had bemoaned 'the farce of everybody wanting and insisting on...rights, nobody thinking of...duty'. And during the World War II, when another Englishman,

What this points to is that the task of providing foundations for a human right to cultural heritage is incomplete without an exploration of at least the contours of the duties that it generates. In this chapter, I therefore turn to the content of such duties. I start by taking a closer look at what precisely the objects of a duty to preserve a human right to cultural heritage are. Looking at this more carefully will allow us to see what commitments are best suited to protect these objects.

I then turn to these concrete commitments, looking at both negative and positive duties that a human right to cultural heritage would generate. A famous objection raised by Onora O’Neill against pre-legal universal positive rights and their correlative duties is that they are ultimately unclaimable. We cannot properly assign the duty bearers for such rights. Negative rights can be assigned universally, since all that is required to fulfil them is non-interference, so there seemingly is no problem with their claimability. In principle, every single one of us can be a bearer of such duties. Positive rights, on the other hand, “can be realized only through expenditure of resources, the transfer of goods, and the performance of services” (Etinson 2013, 466) and they cannot plausibly be assigned to all, unlike their negative counterparts. What makes matters worse for positive rights and their correlative duties is that we in principle cannot know how such duties ought to be allocated without a pre-existing institutional framework. What follows from this is that, understood as moral rights held simply in virtue of being human and existing irrespective of an institutional framework, positive rights of this sort are unclaimable. Therefore, positive rights of this sort cannot be “both rights and institutionally transcendent moral norms.” (ibid.) What O’Neill takes this to imply is that human rights that generate robust positive duties are “empty rhetoric” (O’Neill 2005).

I will not address this famous and complex concern here. Much has been said about it<sup>103</sup> and for the sake of argument, I will assume that in principle a response to O’Neill’s worry can be given and will instead focus on the more concrete issues of how precisely duties correlative with a human right to cultural heritage should be understood. While I have been referring to human rights as having an explicitly moral dimension,

---

H. G. Wells, solicited Gandhi’s support for his bill of rights defining war aims, the mahatma recommended that Wells write a cosmopolitan charter of duties instead—a statement of what citizens of the world owe to each other.” (Moyn, *ibid.*)

<sup>103</sup> See, among others, (Ashford 2008), (Collins 2016), (Etinson, *ibid.*) and (Tomalty 2014).

existing independently of whether there are institutions to establish them, I have also noted that such moral rights underwrite the practical-legal human rights discourse. Considering this, here I will primarily look at the contours of legal duties that a human right to cultural heritage can generate, so I will presuppose the existence of human rights institutions. If the argument that I have provided in the thesis is convincing, we have good grounds to consider cultural heritage to be something we have a human right to. It is important therefore to see how its correlative duties would fit with a more established set of legal duties generated by other human rights; in the case examined in this chapter, a human right to culture.

Due to the focus on human rights practice, in this section I will primarily look at duties held by states, given that in such contexts, it is states that are traditionally viewed as human rights duty bearers. However, I think there is conceptual space to view other agents as bearing duties generated by human rights to cultural heritage. In the final section I argue that non-state actors, such as corporations and military groups should be treated as bearers of duties to protect cultural heritage *qua* human right.

## 6.2 Duties to preserve what?

A natural implication of my account of the foundations of a human right to cultural heritage and its relationship to normative agency is that the object(s) of a human right to cultural heritage are not just tangible and intangible historical artifacts, but also the practices that surround them. To see why this is the case, we need to briefly recall what, under the understanding of the term proposed here, makes something an instance of cultural heritage. I argued previously that a significant element of the concept of cultural heritage is accounted for by looking at the processes by which an object is designated as cultural heritage. In other words, we cannot fully find out what cultural heritage is, let alone why is it valuable and worthy of protection, if we do not inquire into the role it plays in our lives and the ways in which we use it to fulfil such a role.

I have argued that cultural heritage is a means by which we use elements of our past to make sense of our present, both as individuals and as communities. What makes both tangible objects and intangible practices instances of cultural heritage is the community's designation of them as cultural heritage. And integral to designating something as cultural heritage is its use as a particular way of making sense of the present

circumstances of both the community and the individuals involved. As I have mentioned before, one purpose for which historical objects are used in this way (and hence become cultural heritage) is to establish a communal identity and a sense of belonging. Consider the case of the expansive and idiosyncratic modernist architecture of Kaunas, one of the major Lithuanian cities and a temporary capital during Lithuanian independence between 1918 and 1939. The city expanded significantly during these years by introducing a variety of buildings that blend classic art deco elements with Lithuanian folk-art motives, which resulted in a “simplified yet characteristic version of the [art deco] style” (Bryant 2016). As such, Kaunas modernism has become a deeply and widely cherished element of Lithuanian culture and a strong factor in facilitating both an urban and a national identity.

Interestingly, it has gained such prominence via garnering the status of widely received cultural heritage only over the last couple of decades. While the modernist buildings were always an important aspect of Kaunas’ architectural landscape, they were not widely perceived as Lithuania’s national cultural heritage. As such, the buildings were not treated as a crucial cultural symbol that implied much of significance about being Lithuanian or being from Kaunas.<sup>104</sup> Part of what could explain this is more than half a century of Soviet rule and its portrayal of Kaunas, as the capital of the formerly independent Lithuania, as the epitome of bourgeois excess. Kaunas’ modernist architecture, with its role in the urban expansion of Kaunas during the years of Lithuanian independence, its distinct blend of Lithuanian folk art—a symbol of Lithuanian nationalist sentiment—and explicitly western art deco influences, was not something to venerate, but rather to keep silent about, if not outright criticise. It is no surprise that for the same reasons Kaunas’ modernism has become an important national symbol of independence, innovation, and resilience and, in turn, has become an important piece of Lithuanian cultural heritage during the post-Soviet era. As such, it is an important means by which a national identity, and with it, social cohesion and sense of belonging are now facilitated. (Drėmaite 2018)

---

<sup>104</sup> The shift of treating Kaunas art deco architecture as cultural heritage and, in virtue of that, as something in need of preservation is also reflected in campaigns to involve international bodies in its preservation. As a result, as recently as 2015, the city was both awarded the European Heritage Label and was granted a UNESCO City of Design status (Rimkutė 2016).

Such construction of cultural heritage functions not only on a national (or even more local) level. An example of the construction of cultural heritage on a more global scale is a recent initiative by the European Union titled the European Heritage Label. The initiative was started, in part, because of the referenda in France and the Netherlands that rejected the European Constitution. The impetus for the initiative was the perceived need by the European Commission to facilitate a genuinely European—transnational—identity, as opposed to just a national one of a member state (Kaasik-Krogerus 2021). What was seen as integral to this was establishing a list of historical objects which would be seen as common European heritage. Such cultural heritage is meant to embody “milestones in the creation of today’s Europe” and would “celebrate and symbolise European ideals, values, history and integration” (European Commission 2022). Member states nominate historical objects in their countries that fit this picture and they come to be labelled as instances of European cultural heritage. Amongst examples of such cultural heritage are the Peace Palace in the Hague, the Heart of Ancient Athens, and the Village of Schengen.

What such examples show is that cultural heritage is at least in part socially constructed. In other words, a historical object becomes cultural heritage through a distinct and intentional selection process and that serves the purposes of a given cultural community. Such an understanding of cultural heritage suggests a departure from the widely received view that cultural heritage is solely and primarily a “legacy of physical artifacts and intangible attributes of a group or society that are inherited from the past generations” (European Parliament 2018). This definition seems to imply that cultural heritage is a static historic legacy, something that is first and foremost about the past of the community. By putting an emphasis on the social construction of cultural heritage, the account of cultural heritage proposed here rather points to the way in which the community’s present is an equally relevant feature of cultural heritage, while still being able to accommodate its orientation towards the past.

Additionally, given the foundation of a human right to cultural heritage proposed in the earlier chapters, what makes cultural heritage an important aspect of our navigating the world is the role it plays in individual normative agency. As I have argued, it is an important condition for normative agency, as something that shapes our memories, both autobiographic and collective and, through this, forms our senses of self. Additionally,

cultural heritage can itself be viewed as an expression of our normative agency, insofar as we view cultural heritage as socially constructed.

However, putting the social construction of cultural heritage and its connection to normative agency together results in a somewhat unorthodox picture of the objects of a human right to cultural heritage. Under the proposed picture, a right to cultural heritage protects not only the list of various historical artifacts, but the social practices by which such historical artifacts become objects of cultural heritage. It is the attempts to make sense of the present, in the form of, among other, modelling social cohesion, building in-group narratives of belonging and exclusion, that make historical objects instances of cultural heritage. So, the duties generated by a human right to cultural heritage will be targeted not only towards preserving the historical artifacts, but also said practices, integral to objects being treated as cultural heritage. So, in addition to duties to, say, ensure that a cultural group and the individuals that make it up have access to a certain historic artifact, the duty bearers, all other things being equal, also have duties to not limit the processes through which historic objects become cultural heritage, to not censure and impose a certain interpretation of the past on a community, and the like. And, given the harms that historically creative cultural heritage selection for group-building narratives can bring, there might also be both a moral and an epistemic duty to be critical of such selection procedures.

### ***6.2.1 Conflicts between heritage and history***

Such an approach to the objects of the duties associated with human rights to cultural heritage may sound unintuitive to some. One may worry that if we follow this proposal to the letter, we may end up in a situation where our duties to, say, not interfere with certain interpretations of historic objects are going to conflict with the need to preserve historic objects themselves. Consider the case of the destruction of the Buddhas of Bamiyan in Afghanistan. Recall that the Taliban motivated the destruction of the Buddhas by, among other things, religious law—more precisely, by reference to a religious dogma that demands the destruction of false idols.<sup>105</sup> Could it not therefore be

---

<sup>105</sup> Other motivations that have been provided by the representatives of the Taliban reveal a more complex picture, with quite a bit of focus in the rhetoric on the ethics of using precious resources to preserve

argued, under the picture of cultural heritage rights provided here, that the destruction of the Buddhas, however precious, was, at least in part, justified by a human right to cultural heritage?

Of course, the Buddhas were not the Taliban's cultural heritage (nor did they claim it to be) and this does make a significant difference, since the act then does amount to the destruction of objects that the Taliban did not rightfully have claim over. Nevertheless, the destruction of the Buddhas could be interpreted as structurally something quite like the treatment of historical objects as cultural heritage, therefore the worry is still worth addressing. That is, the destruction of the Buddhas could be seen as a way in which a cultural community inhabiting the region where the historic objects were situated chose to use said objects to make sense of their present purposes: such use simply amounted to destruction. Such destruction of historical artefacts, insofar as it plays a sufficiently important role in shaping and maintaining a cultural identity of members of communities associating with the Taliban, could even be viewed as something quite relevant, perhaps even central, to the normative agency of members of these communities. And if this is the case, then we might be able to see the devastating destruction of the Buddhas as an exercise of human rights of the communities to which their destruction was quite important and, even more so, that there be duties that are owed to such communities in virtue of such a right.<sup>106</sup>

---

inanimate objects instead of alleviating human suffering in the region. Consider the following excerpt from an interview in which the Taliban's supreme leader, Mullah Omar, discusses the reasons for the decision to destroy the Buddha: "I did not want to destroy the Bamiyan Buddha. In fact, some foreigners came to me and said they would like to conduct the repair work of the Bamiyan Buddha that had been slightly damaged due to rains. This shocked me. I thought, these callous people have no regards for thousands of living human beings—the Afghans who are dying of hunger, but they are so concerned about non-living objects like the Buddha. This was extremely deplorable. That is why I ordered its destruction. Had they come for humanitarian work, I would have never ordered the Buddha's destruction." (Shehzad 2004) The Taliban ambassador at large Sayed Rahmatullah Hashemi has provided similar motivation for the destruction of the statue but declined to comment "on the claim that a foreign museum offered 'to buy the Buddhist statues, the money from which could have been used [to address pressing humanitarian needs]'" (ibid.).

<sup>106</sup> Similar cases might arise with the use of objects of cultural heritage that eventually lead to their destruction. Consider how negatively the practice of whaling has impacted the various whale species. Whaling, a historic cultural practice in various parts of the world that was seen by many communities as

This case seems to quite overtly contradict how we normally think about cultural heritage preservation. The destruction of precious and unique historical objects, such as the Buddhas of Bamiyan and the historic ruins of Palmyra, is something that feels deeply wrong to many.<sup>107</sup> Therefore, the fact that a human right to cultural heritage, an approach that was meant to bolster cultural heritage preservation, may even begin to imply that there might be a justification for such destruction, even a duty to preserve such practices, understandably sits quite uncomfortably with many of us. In light of this, one may wish to treat this worry in much the same way as the harmful practices that attach to historical objects that were addressed in the previous chapter. I argued there that such harmful practices limit the human right to cultural heritage, and there may be no duties to preserve them. I also argued that we need to be careful to view each such case in its appropriate context and to treat all the relevant circumstances with a sufficient amount of nuance. Can the case discussed above be seen in a similar light, that is, as a qualification to a human right to cultural heritage?

I think there are several reasons why this is the case. First, one could also argue that it is not properly an exercise of human rights, because, among other things, the destruction of the historical object was not sufficiently important to the normative agency of the groups involved, namely the Taliban. This is an empirical question and I do not have sufficient resources to properly investigate it here. But even if such an investigation would conclude that the destruction of the Buddhas indeed was an exercise of a human right, it ought not be seen as a sufficient justification for such destruction. As I argued in the previous chapter, what cases such as those involving various harmful practices associated with cultural heritage show is that a human right to cultural heritage

---

their cultural heritage, has eventually destroyed itself, through—among other reasons—severely depleting the whale population.

<sup>107</sup> However, there are instances of cultural heritage that are exceptions to this way of thinking. Consider the Ahayu:da, war gods of the Zuni people. These carved wooden figures are created each year during the winter solstice as part of the blessing linked with the initiation of new bow priests, the political and religious group within the Zuni community. Importantly, Ahayu:da are kept in open-air shrines and when the new ones are added each year, the old ones must be left to decay. Such decay is seen as strengthening the new Ahayu:da (Thomas 2017). In other words, the eventual destruction of the objects is part of the cultural practice that gives them meaning. However priceless the Ahayu:da may be, to preserve them would strip them of their meaning as objects of Zuni cultural heritage.



is not absolute. Such rights and the duties that they generate must fit with a multiplicity of other competing interests, rights, and corresponding duties.

It seems uncontroversial that similar things will hold true with regards to the destruction of precious historical artifacts, such as the Buddhas of Bamiyan. Acts such as the destruction of the Buddhas could themselves be viewed as violations of human rights, this way, at the very least, generating competing considerations to preserve them, if not outright duties to not destroy such historical objects. There are at least three different communities whose cultural heritage the Buddhas can be said to be in this case, and whose members' rights might have been correspondingly violated. First, the Buddhas were an important historical artifact of the people of Hazarajat—a previously semi-autonomous region in which the valley of the Bamiyan is located.<sup>108</sup> The Hazaras, who are Shi'a Muslims, have associated their own meanings with the Buddhas:

in Hazara folklore, the statues are of a star-crossed couple Salsal and Shahmama, whose doomed love ends tragically in both their deaths. The two remain forever separated, petrified in stone, looking across the Bamiyan Valley” (Minority Rights Group International 2016).

As Shi'a Muslims, the Hazaras were violently persecuted by the Taliban. Not only were the Hazaras killed in the thousands, the destruction of the Buddhas was also part of the effort to eradicate them as a group, by suppressing their cultural heritage and identity

---

<sup>108</sup> The Hazaras' claim of the Buddhas as their cultural heritage is also a good illustration of how historical objects change meanings and *become* cultural heritage through their uses for the present purposes of the community. While the Buddhas were an important part of the Hazaras' folklore for several centuries, they became an especially central piece in the early 1990s. As Centlivres notes, since the Islamic conquest of the Bamiyan, the caves and the Buddhas, while not unimportant, were used for various more everyday purposes, such as sheltering and storing goods (Centlivres 2008). Things changed significantly around 1992, when the Communist regime collapsed and the Hazaras gained semi-autonomous status under the leadership of the Hezb-e Wahdat, the Party of Unity. Hazaras see themselves as indigenous to the region and as a culturally and ethnically distinct community from the rest of the population of Afghanistan. The Buddhas became marks of such distinctiveness and a sign of indigeneity. They were seen as representing “the ancestors of the indigenous population” (ibid.).

(ibid.).<sup>109</sup> In light of this, as Centlivres notes, according to some Hazaras, “the destruction of the statues represented [...] an insult against [Hazara] cultural heritage, against their dignity and against the Hazara identity” (Centlivres 2008, 27).

Then there is the larger international community.<sup>110</sup> While the Buddhist population with which the sculptures were associated is long gone from Afghanistan, they are still considered an instance of the cultural heritage of a larger global Buddhist community that symbolizes the roots of their traditions (ibid.).<sup>111</sup> The Buddhas are perceived as having been priceless objects testifying the history of Buddhism’s Western expansion (UNESCO 2003). Various Buddhist Southeast Asian countries felt a deep shock following the destruction of the Buddhas, and many have commented on the loss that this brought on to the larger Buddhist community (ibid.).<sup>112</sup>

What is more, the Buddhas are perceived as having had universal value, something that elevated them to the shared cultural heritage of humanity and not just the people of Afghanistan or the global Buddhist community (Wyndham 2014, 124). This

---

<sup>109</sup> Mullah Mohammed Omar specifically ordered “that the Hazara’s cultural heritage be destroyed, and the Hazara celebration of the Persian New Year, *Jashn-e-Nouroz*, be prohibited” (Minority Rights Group International 2016).

<sup>110</sup> I am intentionally setting aside the question to what extent the Buddhas can be claimed as Afghanistan’s national cultural heritage. This is a complicated question, but the scholarly consensus on it seems to be that characterizing the Buddhas and Afghanistan’s Buddhist history more generally as Afghanistan’s cultural heritage is primarily a Western endeavour and that, unsurprisingly, the majority of Afghans identify much more readily with cultural heritage that they view as directly belonging to their culture (Centlivres 2008) (Wyndham 2014).

<sup>111</sup> Of course, the Buddhist community is a large and a diverse one and not all its members will associate the same significance with the Buddhas. Compare the impact of the destruction of the Buddhas for the normative agency of a Buddhist practicing in the United Kingdom, whose identity is not significantly informed by them to its impact on the descendants of Gandharan Buddhism, the Buddhist culture to which the Buddhas belonged.

<sup>112</sup> On the other hand, according to Centlivres, the shock was of a different kind than that expressed in the West. He quotes a debate appearing in *The Sunday Nation*, an English language Thai newspaper, as an illustration of the reaction characteristic to the Southeast Asian countries: “‘The Buddha is not in his statues’ said some, ‘Only his teaching is important, not its material representations’. ‘However’, said others, ‘the statues of the Buddha belong to our religious life; they are an essential aspect of the veneration of the Buddha, as a historical as well as a sacred Person.’” (Centlivres, ibid.)

prompted some to call their destruction a crime against humanity (*ibid.*). UNESCO granted the site in which the Buddhas stood (as part of the Cultural Landscape and Archaeological Remains of the Bamiyan Valley) World Heritage status in 2003, two years after their destruction. While I have not extensively addressed in what sense we have a human right to cultural heritage of global communities to which we belong and instead focused on the more local, territorially bound groups and instances of their cultural heritage, I think it would be plausible to argue that there is indeed such a right. However, I suspect it must be grounded in something other than our individual normative agency, since our agency seems to generally be more tightly bound with the more local group belonging and the cultural heritage of said groups than our belonging to communities such as humanity and its heritage. What such alternative grounds could be is a question for further research, but likely candidates could be the irreplaceability and uniqueness of such cultural heritage, the importance of it for ensuring other rights, such as rights to education and cultural diversity, etc.<sup>113</sup>

Finally, we have reasons to preserve such historic monuments that are not connected to human rights. I have not discussed this option throughout the thesis instead focusing on reasons to protect cultural heritage having to do with the preservation of human rights. But there being a human right to cultural heritage certainly does not exhaust all there is to be said about why various instances of cultural heritage ought to be preserved. The historic, scientific, and aesthetic significance of certain pieces of cultural heritage alone—certainly the ones on the World Heritage List—as has been argued by numerous scholars and practitioners, is enough to generate duties to preserve them (UNESCO 2003). At the very least, they could justify a compromise solution that would seek to meet the rights of the communities in question and the duties to preserve the historic objects, by, for instance, transporting the sculptures to another location.<sup>114</sup>

---

<sup>113</sup> I do not mean to suggest that cultural heritage belonging to humanity does not influence our individual senses of self in any significant way, but rather that it may be less central to us than cultural heritage associated with our more local attachments.

<sup>114</sup> In fact, two Buddhist majority countries—Thailand and Sri Lanka—and Iran offered to buy the Buddhas, so they could be preserved for all mankind (Centlivres, *ibid.*).

### 6.3 What duties?

What follows from the discussion provided above is that at the foundation the objects of a human right to cultural heritage are of two types: (i) concrete instances of tangible and intangible historical objects and (ii) the narrative practices through which those objects become cultural heritage. Insofar as the picture of a human right to cultural heritage defended here is convincing, such objects will generate duties to respect them. In what follows I will discuss the general contours of such duties.

It is both widely accepted in human rights scholarship (Shue 1980) and clearly established in the jurisprudence of the international human rights law and in human rights practice that human rights generate both negative and positive duties. Consider the position of the UN Committee on Economic, Social and Cultural Rights (CESCR) as it relates to the human right to take part in cultural life, as expressed in General Comment No 21:

The right to take part in cultural life can be characterized as a freedom. In order for this right to be ensured, it requires from the State party both abstention (i.e., non-interference with the exercise of cultural practices and with access to cultural goods and services) and positive action (ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods.) (CESCR 2009)<sup>115</sup>

In light of this, in what follows I will consider both positive and negative duties generated by a human right to cultural heritage.<sup>116</sup> In my exploration of them I will apply a tripartite analysis of human rights duties that distinguishes between (i) duties to respect human rights, (ii) duties to protect human rights, and (iii) duties to fulfil human rights, as it appears in the CESCR's General Comment No 21 on the Right of Everyone to Take

---

<sup>115</sup> Similarly, the Human Rights Committee notes that "a state can only effectively guarantee ICCPR rights 'by a combination of negative and positive State obligations'" (Shelton and Gould 2013, 566).

<sup>116</sup> As I have mentioned before, I do not have space here to address the complicated question whether the duties generated by a human right to cultural heritage can in principle ever be understood as positive ones. I have assumed that there is a way to address O'Neill's objection and left that work for further research.

Part in Cultural Life.<sup>117</sup> This document, among other things, looks at specific obligations that states have to fulfil a human right to culture. I will directly apply this discussion to outline obligations states have to a specific instance of culture, namely cultural heritage. Each of the three categories of duties are interconnected—to fulfil those in one of them also requires fulfilling the others—but for clarity’s sake in the following sections I will try to disentangle them as much as possible.

### ***6.3.1 Duty to respect***

The duty to respect a human right to cultural heritage is primarily conceived as a negative one<sup>118</sup> and encompasses the imperative that the state refrain from interfering with the enjoyment of a human right to cultural heritage (OHCHR 1996-2021). Following the discussion of the objects of cultural heritage provided above, this negative duty involves two imperatives: (i) not interfering with the processes by which a community’s cultural heritage is sustained, facilitated, or even created in the first place; (ii) not interfering with access to the specific objects of cultural heritage. We may view the first as a duty akin to the duty to protect freedom of expression. In the context of cultural heritage, it should be viewed specifically as a freedom of expression to construct narratives about historic objects and practices that constitute a collective identity.<sup>119</sup> The

---

<sup>117</sup> As Shelton and Gould note, sometimes an additional obligation, namely an obligation to *promote* human rights is added (Shelton and Gould 2013). However, here I will focus on the initial triad of obligations found in CESCR’s General Comment 21.

<sup>118</sup> Although, as it will become clear below, it might entail positive action as well, especially in cases where the duty to respect cultural heritage rights needs to be restricted.

<sup>119</sup> Pok Yin S. Chow takes a similar attitude towards duties to preserve cultural heritage. However, the investigations in which it arises are different from mine. Chow argues that we can note a distinct enrichment in treatments of culture in international human rights discourse. In addition to viewing culture as high art achievements, popular culture and a way of life, it is now increasingly being treated as a set of collective memories, “a concept which acknowledges the aspect of culture that consists of shared ideas and beliefs in history, ancestry and of life sustained in a community of individuals’ memory, lived, signified, expressed and enacted, which gives heritage and cultural practices their meaning” (Chow 2014, 613-614). The Cassirer-inspired account of culture that I have defended seeks to incorporate all of these strands of the concept of culture. After providing a thorough analysis of this account of culture in international legal discourse and in the work of Treaty Bodies, Chow concludes with a brief consideration of what obligations

second is a duty to not interfere with access to and use of objects that such narratives are centred around or for the enactment of which they are necessary. Various other rights the objects of which overlap with cultural heritage and the duties correlated with them, might also overlap with this, such as rights to religion, rights to private life, etc. For instance, there might be a duty to not interfere with access to a particular cultural object, say as sacred site, both on the grounds of a right to cultural heritage and a right to religion. Similarly, there might be a duty to not interfere with traditional ways of life both grounded in a right to cultural heritage and the right to private life.<sup>120</sup>

The duty to respect human rights to cultural heritage can only be restricted if the right itself is restricted, for instance, such as in cases in which it may cause harm, as discussed in the previous chapter and in the section on the destruction of historic cultural objects above. So, if ensuring a human right to some instance of cultural heritage leads to overt harms—or if the process by which cultural heritage is created and its meanings negotiated is one that leads to such harms—then the duty to protect objects of a human right to cultural heritage would be restricted. The potential need for such restrictions has been well established in the legal discourse on international human rights. For instance, General Comment 21 of CESCR explicitly notes that

limitations to the right of everyone to take part in cultural life may be necessary in certain circumstances, in particular in the case of negative

---

such account of culture would generate for states, one of which is to “respect and facilitate the process within which these memories are sustained and transmitted through the expression and enactment of memories in the public sphere” (ibid. 654) Chow, as I do, also notes the importance of putting an emphasis on education and history, given how easily states can appropriate objects of cultural heritage for their own ends (ibid.)

<sup>120</sup> See *Chapman v. the United Kingdom*, in which the European Court of Human Rights (ECHR) examined the “the question of the lifestyle of gypsy families and the specific difficulties they have to deal with when they park their caravans on their own property” (Research Division of the European Court of Human Rights 2017) and ruled that Article 8 of the European Human Rights Convention, guaranteeing the right to respect private and family life, entails a positive obligations on the part of the State “to facilitate the Gypsy way of life, particularly by considering their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decision in particular cases.” (ibid.)

practices, including those attributed to customs and traditions, that infringe upon other human rights (ibid.6).<sup>121</sup>

To what extent such a right and the correlative duty to respect it should be restricted is largely dependent on its particular context. This means that such restrictions will generally need to be judged on a case-by-case basis, as I argued in the chapter on the harms of cultural heritage. However, paradigmatic examples of such restrictions include cases in which cultural heritage construction narratives lead to discrimination and hate-crimes. As I noted above, some of the duties involved in respecting rights to cultural heritage can be seen as akin to duties to protect freedom of expression. Given this, the traditional limitations pertaining to the duty to respect freedom of expression will also apply here. The state's duties to respect a right to cultural heritage—much like in the case of freedom of expression—are going to be restricted when it leads to discrimination and hate crimes.<sup>122</sup> Other paradigmatic cases of limitations on duties to respect a human right to cultural heritage involve historical tangible or intangible objects that are harm causing. A state does not have a duty to respect people's right to cultural heritage that causes direct physical or psychological harm, such as female genital cutting or child marriage, both of which are internationally recognized human rights violations (UNICEF 2021).

But any such restrictions need to be proportionate: “the least restrictive measures must be taken when several types of limitations may be imposed” (CESCR 2009, 6) to

---

<sup>121</sup> And similarly:

Article 15, paragraph 1 (a) [the right of everyone to take part in cultural life] may not be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the derestriction of any of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided therein. (ibid.)

<sup>122</sup> For instance, according to this picture, the state does not have duties to protect explicitly racist cultural heritage. Consider the carnival of Aalst, taking place each year in Belgium. The parade on several occasions involved anti-Semitic symbolism as “caricatured floats of Orthodox Jews with hooked noses, seated on bags of gold” (Gaubert 2019). Under the picture of duties to respect rights to cultural heritage, the state would not have a duty to protect this instance of cultural heritage. While the Belgian government has not indicated its leanings one way or another, in 2019 the carnival has been removed from UNESCO's Representative List of the Intangible Cultural Heritage of Humanity over “recurring repetition of racist anti-Semitic representations”.

reach the same effects.<sup>123</sup> While official documents such as General Comment No 21 are silent on how precisely the proportionality here ought to be imposed, an example—if a somewhat abstract one—might be helpful. Consider the ways in which many countries tend to respond to female genital cutting. Instead of banning the cultural affiliation with the groups that perform it as part of their traditional practice altogether, states tend to directly prosecute individuals responsible for the performance of female genital cutting, encourage education about its harms and support community-led transformation of the harmful cultural practice (UNICEF 2021).<sup>124</sup> In addition to proportionality, any such restrictions should be sensitive to how narratives about such cultural practices and their prohibitions can lead to harmful instances of essentialization of members of the relevant cultural groups, something I cautioned against in the previous chapter.

### **6.3.2 Duty to protect**

The duty to protect a human right to cultural heritage is a positive one in that it involves the state’s responsibility to actively ensure that individuals and cultural groups are protected from violations of a human right to cultural heritage by third parties, and where such violations occur the state must ensure that the perpetrators are punished and those who have suffered human rights abuses are appropriately compensated.

Meaningful protection of a human right to cultural heritage in this sense will give rise to a variety of more specific obligations, such as exercising “due diligence to prevent,

---

<sup>123</sup> General Comment No 21 is silent on how exactly the proportionality criterion should be met. Like any political document of this kind, its contents are the result of compromise, and vagueness of this sort comes with the territory. Additionally, this might also be a sign of the recognition that such restrictions will need to be sensitive to the complexities of each individual case of harmful cultural heritage and its context.

<sup>124</sup> For instance, Sweden in 1982 passed the *Act on Prohibition of Female Circumcision*. A similar law was passed in the UK in 1985, titled *The Prohibition of Female Circumcision Act*. In France, there is no specific law against FGM, but article 312-3 of the Penal Code is applied in the prosecution of violence against a child under 15, “if the result has been mutilation, amputation or [...] loss of an eye or other permanent disabilities, or death not intentionally caused by the perpetrator.” The Criminal Division of the Cour de cassation decided, by a judgment of 20 August 1983, that ablation of the clitoris resulting from wilful violence constituted a mutilation under 312-3 of the Penal Code.” (OHCHR 1995). Special attention to education about the harms of FGM is being paid by Australia, Belgium, Canada, Djibouti, Egypt, Finland, France, Germany, Italy, the Netherlands, Norway, Somalia, the Sudan, Sweden, and the United Kingdom (ibid.).



punish, investigate, or redress harms caused by acts by private persons or entities” (Shelton, Gould, *ibid.* 574). It is in the context of the duty to protect that General Comment No 21 explicitly emphasizes cultural heritage as an integral part of the right to take part in cultural life. States have a special responsibility to prevent harms to cultural heritage in all its forms, in times of war and peace and natural disasters (CESCR, *ibid.* 13). This means that, as part of the duty to protect a human right to cultural heritage, states have an obligation to commit resources to the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others (*ibid.*), as instances of cultural heritage of all communities that reside within the bounds of the state—in particular the most disadvantaged and marginalized individuals and groups (*ibid.*). As is often noted, the power imbalance that such individuals and communities face make them especially vulnerable to human rights violations.

Such protection often can be—and in certain instances ought to be—delegated to sub-national and/or indigenous groups that are most closely associated with the cultural heritage in question.<sup>125</sup> At a bare minimum, such groups, all other things being equal, must be granted veto power when it comes to large-scale changes to the objects of cultural heritage or their status, such as tearing down historic buildings or renovating and repurposing them, selling off historic artifacts or even plain use of pieces of intangible (and tangible) cultural heritage by third parties. Needless to say, these groups must also

---

<sup>125</sup> In fact, taking away such individuals’ and communities’ agency when it comes to control of their cultural heritage could in principle amount to a human rights violation in and of itself. Consider how harmful the appropriation of their tangible and intangible cultural heritage has been to the various Native American communities. Appropriatory practices such as the objectification of the remains of their ancestors by exhibiting them in museums, the commodification of sacred ritual objects and so on, have not only deprived the Native communities of the rightful control of their cultural heritage, but also “silenced, spoke for, and misrepresented Native voices, a function predicated on a history of colonial oppression and its continuing effects and manifestations” (Matthes 2019, 1004). This can be deeply traumatizing to the cultural identities of the members of such groups and through this, severely negatively influence their normative agency and in virtue of this constitute a human rights violation. This of course raises difficult questions about who the perpetrator is in such cases of human rights violations. According to the legal model of human rights, according to which it is states that are primary agents in securing and violating human rights, we could argue that it is the state’s responsibility to prevent conditions for such harmful appropriative practices.

be consulted regarding the ways in which their cultural heritage should be protected by the state.<sup>126</sup>

A crucial part of the duty to protect is also the duty to investigate and punish violations of a human right to cultural heritage and provide effective redress, which entails an obligation to have a robust domestic legal framework for the protection of cultural heritage, both its objects and the processes by which such objects become cultural heritage, *qua* right to freedom of expression. Integral to this task is an obligation to amend legal frameworks should it come to light that the existing laws and regulations do not sufficiently protect the human right to cultural heritage.

Unfortunately, it is the occurrence of cultural heritage destruction that frequently triggers laws guaranteeing its more effective protection. Consider the recent destruction of the Juukan Gorge rock shelters, a sacred site for the Puutu Kunti Kurrama and Pinikura peoples in the Pilbara region of Western Australia dating back more than 46,000 years. On the 23<sup>rd</sup> and 24<sup>th</sup> of May 2020, Rio Tinto, a mining corporation, blasted the cave that contained the rock shelters to access high-grade iron ore more easily. The company had “received ministerial consent to destroy or damage the site in 2013 under [Western Australia’s] outdated Aboriginal heritage laws, which were drafted in 1972 to favour mining corporations.” (Wahlquist 2020). One year after this consent was granted, an archaeological dig discovered that the site was more than twice its originally presumed age and “rich in artefacts, including sacred objects” (ibid.). However, according to Western Australia’s Aboriginal heritage laws, consent cannot be renegotiated given new evidence of the value of the sites, so despite regular appeals by the Puutu Kunti Kurrama and Pinikura Aboriginal Corporation, Rio Tinto went ahead with the destruction (ibid.).

---

<sup>126</sup> Consider the importance of such community consultation for cases of cultural heritage preservation requires its eventual destruction, as in the case of the Ahayu:da, war gods of the Zuni people (see supra note 110). From the late 19<sup>th</sup> century, there was great enthusiasm for the collection of these wooden sculptures for museum and private-collection preservation. This was a significant mistreatment of the Zuni cultural heritage and, arguably, a violation of the human right to cultural heritage. In a rare positive development in reclaiming such heritage, in the 1970s Zuni leaders “through entreaty, negotiation, and pressure began to bring [some of the Ahayu:da] home. More than a hundred have since been brought back to Zuni territory and are now kept at a shrine, secure but open to the elements, permitting the deities to decay.” (Thomas 2017)

This destruction caused outrage, both locally and globally, considering which legislators have attempted to introduce better protection for Aboriginal heritage. The new draft bill allows for Indigenous communities to designate locations of high significance for special protection; however, the government still retains final decision in disputes involving such sites (Paul 2021). While bills like these are steps in the right direction, Aboriginal groups argue that this law falls short of protecting their cultural (and heritage) rights, as they do not have a final say over what happens to the sacred sites (ibid.).<sup>127</sup>

Cases such as these are indicative of the complexities involved in introducing new laws for the protection of the human right to cultural heritage and the importance of involving the relevant communities in the drafting of such laws that are aimed at protecting their cultural heritage. In this case, to effectively protect such rights by increasing the level of their protection, Australia arguably might also have a duty to introduce federal legislation regarding this issue, as opposed to relying on state laws alone.<sup>128</sup> Importantly, also, where domestic legal protection of human rights to cultural heritage fails, states have a duty to cooperate with the international bodies' investigations of human rights violations. A group of Aboriginal people have filed a complaint to the United Nations over the Western Australia's cultural draft heritage bill. The group is making a formal appeal to the UN Committee on the Elimination of Racial Discrimination on grounds that the draft bill is incompatible with Australia's international obligations (Reuters 2021). If this request is successful and the Committee takes up the task of reviewing the law, Australia will arguably have an obligation to, at the

---

<sup>127</sup> Understandably, the main sentiment here seems to be that of mistrust. The government already signed off once on the destruction of a sacred site, knowing full well how central it is to the Aboriginal community. Without more control granted to the Aboriginal communities, it is not clear what is to stop the government of Western Australia from doing it again. Consider the following excerpt from a statement made by the National Native Title Council Chairman Kado Muir regarding the heritage bill: "This will be business as usual on our sacred sites, which leads to the continued destruction and desecration of Aboriginal cultural heritage" (Paul 2021).

<sup>128</sup> This, in addition to granting more control over the management of the sites like the Juukan Gorge to the Aboriginal communities, has been proposed by the national inquiry into Rio Tinto's destruction of the Juukan Gorge (Burton 2021).

very least, cooperate with said investigation as part of their duties to protect a human right to cultural heritage.<sup>129</sup>

### ***6.3.3 Duty to fulfil***

And lastly the duty to fulfil a human right to cultural heritage—a decidedly positive one—commits the state to ensuring that a human right to cultural heritage is fully realized and implemented. Arguably the most demanding of the three, given its expansiveness, this category of duties gives rise to a variety of commitments on the part of the state, starting from ensuring the conditions for everyone to freely participate in the life of the relevant cultural community to regulating cultural heritage custodianship and access. General Comment No 21 distinguishes between three distinct types of duties that make up the duty to fulfil: (i) facilitate, (ii) promote and (iii) provide (CESCR, *ibid.* 13)

The duty to facilitate a human right to cultural heritage entails “taking a wide range of positive measures, including financial measures, that would contribute to the realization of this right” (*ibid.*). I mentioned before that a human right to cultural heritage is tightly interwoven with other highly valuable goods. One such good that the UN emphasises, especially through General Comment No 21, is cultural diversity. This is not surprising. Cultural diversity is a result of effective protection of various communities’ human right to cultural heritage. An important means to facilitate a human right to cultural heritage is therefore adopting policies for the protection and promotion of cultural diversity. Such policies include allowing national and regional minority communities to use to their own language and other instances of their tangible and intangible cultural heritage (*ibid.*, 13). Such a duty also involves policies guaranteeing access not only to one’s own cultural heritage, but to the cultural heritage of others (*ibid.*). Respect for cultural diversity, and through it a human right to cultural heritage, is

---

<sup>129</sup> There have been numerous other cases in which individuals or cultural groups have accused their governments of not effectively protecting their cultural heritage. This is not usually cashed out by an appeal to a human right to cultural heritage *per se*, but rather to some other human rights, such as a right to self-determination or non-discrimination. See *Lubicon Lake Band v. Canada*, *O. Sra et al. v. Finland*, *Kitok v. Sweden*, etc.

not only facilitated but made possible in the first place only through awareness of the richness and complexity of our cultural lives.<sup>130</sup>

Similarly, the duty to facilitate a human right to cultural heritage is closely tied to the imperative of non-discrimination: the right to cultural heritage must be secured for all, regardless of their race, gender, ethnicity, religion or any other such feature (ibid.). Therefore, a state must guarantee that effective measures are taken that everyone who so desires can “engage freely and without discrimination” with their cultural heritage and those of those of others (ibid.) and that toleration and mutual respect is guaranteed between various cultural communities.

An integral part of this is taking positive measures in ensuring that the most disadvantaged communities—often indigenous groups and ethnic minorities—have access to their cultural heritage and that of others (ibid.). Often it is these communities that face the most discrimination and prejudice, so special effort needs to be made on the part of the state to eliminate any barriers that their members might face to enjoy the right to cultural heritage (ibid., 11). Such measures can be financial: ensuring that appropriate material conditions can be met for access and use of cultural heritage by members of such communities (ibid.); legislative—creating laws that allow for greater control and protection of their cultural heritage; and educational—informing the larger society of the history and cultural richness of such communities and their heritage (ibid.).

The duty to promote a human right to cultural heritage likely requires a particular focus on education about both human rights and cultural heritage (ibid.). Human rights education is central for this approach to cultural heritage to succeed. Only through education about the importance of human rights—and the specific right to cultural heritage—can respect for such rights be achieved. The duty to promote the right to cultural heritage via cultural heritage education closely connects to the values of cultural diversity and non-discrimination: the two cannot be guaranteed without enough knowledge about the various cultural communities and their cultural heritage. Such knowledge has the potential to create a special bond between members of cultural

---

<sup>130</sup> Of course, access to a particular community’s cultural heritage needs to be granted by that community. However, it seems that as long as the cultural heritage is engaged with in a respectful fashion—as it is determined by the community whose cultural heritage is concerned—most communities are happy to share it with others.

communities and ultimately between the individuals comprising the state, a bond that is necessary for a well-functioning democracy with a firm commitment to human rights. Often, learning about each other's cultural heritage, distinct ways of being and how such cultural heritage might have shaped the course of, say, the cultural life of the broader cultural community comprising the state allows us to relate more easily to others and engage less frequently in "othering" practices.

Lastly, the obligation to fulfil "requires that States parties must provide all that is necessary for fulfilment of the right to take part in cultural life when individuals or communities are unable, for reasons outside their control, to realize this right for themselves with the means at their disposal" (ibid. 15). This is a special obligation that directs the states' attention to the most disadvantaged communities. Individuals in these communities, often either through lack of material resources or power imbalance, are most at risk of having their human rights to cultural heritage violated; hence, special positive measures need to be taken in order to secure this right. General Comment No 21 explicitly singles out cultural heritage as crucial for the protection of the right to take part in cultural life here. More precisely, a state has obligations to establish programs aimed at preserving and restore their cultural heritage of such communities (ibid.14), include "cultural education at every level of school curricular, including history, literature, music and the history of other cultures, in consultation with all concerned" (ibid.), and guarantee access, "without discrimination on grounds of financial or any other status, to museums, libraries, cinemas and theatres and to cultural activities, services and events." (ibid.)

#### ***6.3.4 Is this account of duties too demanding?***

As I have just argued, duties that a human right to cultural heritage will generate are going to be both positive and negative. However, the positive duties are quite demanding, and the broad-stroked sketch of them that I have provided above is indicative of this. In fact, one could argue that they are *too* demanding. The problem is that by requiring the duty bearers to take often quite resource-heavy forms of positive action to meet the duty, we may make human rights pragmatically unattainable. Similarly, given the costliness of such duties and the limited resources that states have, they may require making uncomfortable trade-offs when it comes to pressing interests that other

rights protect. As often happens, a state might not have resources to both adequately preserve a certain historical culture and its heritage and at the same time guarantee that other important but resource-heavy needs of ours are met, such as education, access to adequate healthcare, etc.

However, the fact that to be fully realized certain rights require more resources does not show us that such rights are in principle unattainable (Nickel 1993). The view that certain human rights, due to their high costs, are realizable in stages seems to have become quite commonplace in international human rights practice. According to a document published by the Office of the United Nations High Commissioner of Human Rights, a central aspect of States' obligations in connection with economic, social, and cultural rights under international human rights instruments, is their progressive realisability. States have obligations to take appropriate measures towards full realisation of such rights *to the maximum of their available resources* (OHCHR 2008).<sup>131</sup>

This, of course, does not mean that States do not have obligations to protect such rights until they have reached an adequate level of resources: “the treaties impose immediate obligations to take steps towards the full realization of economic, social and cultural rights” (ibid.). Some such obligations are going to be wholly negative and therefore not requiring too many resources. It does not cost a state much to not prohibit a minority or an indigenous community to communicate in its historic language. Not forbidding the group to have access to what it deems to be its relevant historic artifacts and not interfering with the group's treatment of certain objects as their cultural heritage are similarly light on resources. When it comes to positive and more costly obligations, under this picture a state has an obligation to commit to an attainable plan of action for the further realizability of such rights. OHCHR refers to a human right to education as an example to illustrate this thought: “States parties to the [ICESCR] have a strict limit of two years to develop a plan of action to ensure the provision of free and compulsory primary education for all” (ibid.). The same could be said about more resource-costly obligations generated by a human right to cultural heritage. The State, in addition to

---

<sup>131</sup> I do not mean to suggest that this approach does not face worries of its own. Gopal Sreenivasan has argued that such an approach to gradual realisability of human rights—his focus is on a human right to healthcare—may leave different people with different human rights, depending on whether they are born in wealthy or in poor countries (Sreenivasan 2016).

meeting its minimum negative duties, has an obligation to genuinely commit to a feasible plan of realizing the right down the road.

#### **6.4. Whose duties?**

Traditionally, in the context of human rights, the state is specified as the primary duty bearer (and often the sole duty bearer) (del Valle 2017, 205). I too have so far focused on the positive and negative duties that the state has to uphold a human right to cultural heritage. Duties such as these involve ensuring that the residents of the state can freely enjoy and make use of its cultural heritage, determine objects of cultural heritage, participate in the broader cultural life of their community and the like.

But, as Sikkink and del Valle note, while the dyadic model of state duties and its residents' rights is an essential one, it does not exhaust all possible ways in which human rights and duties interact (ibid., 206). The link between rights and duties also often “involves supplementary and complementary relationships among multiple actors” (ibid.). And it is likely that to be fully realised, many human rights will require “multiple overlapping layers of duty relationships to exist at once” (ibid.). To explore this thought further, what I will focus on in the remaining part of this chapter is what duties human rights to cultural heritage might generate for non-state actors, such as corporations and international organizations and whether there are any duties generated by human rights to cultural heritage that individuals might hold as well. In the previous section I have focused on how a human right to cultural heritage could fit with the legal duties enshrined in the General Comment No 21. In what follows I will set the complicated question of whether and how the duties that third party agents have could be enshrined in either the domestic or international law. Instead, I will focus on general motivations for considering them as duty-bearing agents in the first place.

##### ***6.4.1 Non-state actors: Corporations and military groups***

What seems to motivate the overwhelming focus on state duties in the literature and contemporary human rights practice is the view that one of the chief purposes of human rights is to address the inherent power imbalance between the individual (and disadvantaged groups) and the larger structures on which they rely, such as the state, or



to, at the very least, ensure that such power imbalance does not lead to harms. For instance, members of a minority culture or indigenous communities within the state can be heavily disadvantaged when it comes to access to their cultural heritage precisely due to such power imbalance between them and the state. The state often represents a majority culture and its cultural heritage that may not leave much space for other cultural groups. The state therefore has duties to ensure that the human rights to cultural heritage of the disadvantaged communities and individuals are guaranteed.

But if power imbalance of this and similar form are one of the motivations for human rights protection then we must look beyond the state and its duties to ensure that human rights to cultural heritage are met. In fact, some of the most prominent recent instances of deliberate cultural heritage destruction, that have also been results of a radical power imbalance, have been perpetrated by non-state actors. Recall the destruction of Palmyra, in addition to various other sites in the Levant, by ISIL, or the world heritage site mosques in Timbuktu by Ansar Dine, to name but a few instances of such destruction. In these cases, the individuals whose cultural heritage was destroyed were quite literally overpowered by these military groups, and the destruction of their cultural heritage was meant to send a message of domination and humiliation, both to the local communities and the rest of the world.

Or consider the already mentioned destruction of the Juukan Gorge by Rio Tinto, the multi-national mining corporation. In this case, the destruction of the Aboriginal cultural heritage was not intended to humiliate and dominate, but rather was an act of carelessness and apathy towards the indigenous community's basic cultural needs. But the power imbalance between the indigenous communities and large-scale corporations is evident. It seems that one of the reasons why such destruction was possible in the first place is because of Rio Tinto's enormous power advantage, both due to the privileged position that Western Australia's outdated heritage laws put them in and the sheer amount of material resources at their disposal. It is well established that the company knew quite well how deeply significant the site was for the Puutu Kunti Kurrama and Pinikura peoples and went ahead with its destruction anyway.<sup>132</sup>

---

<sup>132</sup> Rio Tinto were advised in 2014, that is, six years before the destruction of the Juukan Gorge rock shelters, of the significance of the rock shelters to both the Puutu Kunti Kurrama and Pinikura peoples and Australia more generally (Borschmann 2020). What is more, as Michelmore reports, Rio Tinto failed to

As I have argued above, following the state obligations outlined in General Comment No 21, a state has an obligation to protect cultural heritage from being destroyed by third parties. And this obligation was failed in all the cases addressed above. But to attribute the blame here to the state alone seems to be missing an important piece of the puzzle. The primary harms associated with cultural heritage destruction here were caused by non-state actors and the danger in arguing otherwise is in allowing for impunity for such actions. As Tasioulas and Vayena note, “in an environment of accelerating globalization, with a concomitant decline of state power relative to various other global actors, the importance of not conceptually restricting human rights obligations to states is all the more pronounced.” (2016, 368) In light of this, third parties such as military groups and corporations at the very least have a negative duty to *respect* human rights to cultural heritage and when they have failed to do so they should be treated as having violated human rights.

This is not just a theoretical observation. More and more countries and international bodies are adopting laws and providing recommendations on the relevance of holding non-state actors accountable for human rights violations. For instance, “in 2017 France became the first country to adopt a law requiring large multinational corporations operating on French territory to conduct due diligence on human rights throughout their global operations” and the European Commission is “preparing a directive on the issue that will cover the entire bloc.” (Lopez 2021). Additionally, in 2011 the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights (OHCHR 2012).

We may notice a similar policy shift with regards to viewing human rights obligations of military groups. The traditional approach to crimes of military groups considered such crimes as not subject to human rights law (Clapham 2019, 2), instead classifying them under international humanitarian law. According to Clapham, this was motivated by two broad concerns. First, holding armed groups to human rights standards was perceived to carry the danger “of being accused of imposing alien values, [...] especially where armed groups were seeking to overthrow oppression”. Second, it

---

disclose to the communities that there were four options for blasting at Juukan Gorge, three of which would not have involved destroying the rock shelters (Michelmores 2020).

was feared that governments would seek to divert attention from their own human rights violations by putting the spotlight on military groups. (ibid. 3) And it must be noted that cultural heritage destruction in the context of military conflict is covered by several well-established instruments of international criminal law, so the issue of impunity is not as urgent as it is with corporations.<sup>133</sup>

But subjecting military groups to humanitarian law only runs the risk of leaving their crimes unaddressed when the threshold for international humanitarian law has not been reached.<sup>134</sup> As Clapham puts it: “to fail to address the human rights obligation of the armed group at that point is to miss an opportunity to inform the international community and perhaps even alter the *behaviour* of the groups themselves” (ibid.). What is more, “NGOs have found it was impossible to report on country situations without documenting the effect that armed groups have had on the enjoyment of human rights.” (ibid.) [...] Relatedly, states have been needing “to hold special sessions of the UN Human Rights Council to address the atrocities being committed by [ISIS] and the armed group ‘Boko Haram’” (ibid.). In light of this, it is now not uncommon to consider military groups as agents committing human rights violations.<sup>135</sup>

---

<sup>133</sup> See, among other, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), Protocol I Additional to the Geneva Conventions, art. 53 (1977), Protocol II additional to the Geneva Conventions, art. 16 (1977). See also *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, a landmark case in which the ICC found Ahmad Al Faqi Al Mahid, a member of Ansar Dine, guilty for the war crime of intentionally directing attacks against religious and historic buildings in Timbuktu, Mali, in June and July 2012 (ICC 2016).

<sup>134</sup> Clapham mentions the following telling illustration of this problem: “at the start of the Syria catastrophe, the UN Human Rights Council’s Commission of Inquiry considered that the threshold for the application of armed conflict has not been reached. Faced with the prospect of not reporting at all on the behaviour of the armed groups, they asserted that such groups were bound by peremptory rules of international law and that the Free Syrian Army had in any event committed to respect human rights” (ibid., 4)

<sup>135</sup> Corporations and military groups do not exhaust non-state human rights duty bearers. It is not uncommon to argue that individuals also have duties to uphold human rights (Beddard 1999) (Besson 2015) (Hodgson 2003). Crucially, future research will need to investigate what precise obligations to uphold human rights to cultural heritage could individuals carry. Some of the obligations that the non-state actors have that I addressed above will extend to individuals responsible for the governance of corporations and military groups, such as CEOs and military leaders. But, due to space constraints, I have

## 6.5. Conclusion

In this chapter I concluded my investigations of a human right to cultural heritage, by looking at what duties a human right to cultural heritage should be understood to generate. I first looked at what such duties are centred on, arguing that the duties ought to target both processes through which historical objects become cultural heritage and the historical objects themselves. I then moved to inquire into what specific duties a human right to cultural heritage would generate for states.

The reference point of my inquiry here was General Comment No 21, a landmark document produced by the Committee for Economic, Social and Cultural Rights. The purpose of General Comment No 21 was for the Committee for Economic, Social and Cultural Rights to provide an interpretation of a human right to take part in cultural life and provide specific guidelines for the implementation of such a right. Integral to such guidelines was specifying a set of specific legal obligations that states have to uphold this right. I have provided a detailed discussion of how duties generated by a human right to cultural heritage would fit with the broader duties generated by a right to take part in cultural life. I concluded the chapter with a brief discussion of who in addition to the state could also be tasked with carrying out duties to uphold human rights to cultural heritage.

---

not addressed what obligations, if any, would ordinary individuals have in relation to human rights to cultural heritage.

## **Conclusion**

The thesis was primarily concerned with the investigation of two large themes surrounding a human right to cultural heritage: (i) the concept of cultural heritage and (ii) the conceptual foundations of a human right to cultural heritage. By way of a conclusion, I now turn to a summary of what work has been done here and a discussion of some avenues of future research involving each of these two themes.

### **Cultural Heritage**

My inquiry into the concept of cultural heritage sought to bring out its features most salient to human rights concerns. Cultural heritage, both the concept and the objects that underwrite it, are multidimensional and my goal here was not to provide an all-encompassing account of either. I wanted rather to shed light onto the dimensions of cultural heritage that connect most readily to both how we relate to the world and our most fundamental needs.

I have provided a constructionist-inspired account of cultural heritage that focuses not only on its concrete manifestations, but also on how such objects become cultural heritage in the first place. As such, cultural heritage can be viewed as a social construct of sorts. The foundational assumption of this account is that without our social practices, such as tasking historical objects to serve present needs, cultural heritage would not exist. Historical objects that are selected as cultural heritage would exist, as would our histories, but cultural heritage as a phenomenon would not.

In Chapter 1, I distinguished between two paradigms of cultural heritage—a universalist and a particularist one. The particularist paradigm focuses on cultural heritage that is associated with various smaller scale cultural communities, such as nations, ethnic and religious groups and the like. The value of such cultural heritage is first and foremost expressed in terms of its relevance to these communities. The universalist paradigm encompasses cultural heritage that has ‘universal’ value—it is perceived to be valuable to all of humanity, as opposed to discrete communities.

Characteristic objects of cultural heritage of this sort are those on UNESCO World Heritage List and on UNESCO Representative List of the Intangible Cultural Heritage of Humanity. I built my account of a human right to cultural heritage on the particularist paradigm and left the question whether there is a human right to cultural heritage under the universalist paradigm open. I did this for two reasons. First, insofar as the work I do here is an attempt to make sense of the practice of institutions such as the UN and UNESCO, it is important to work within their confines. Human rights to cultural heritage there are first and foremost associated with the particularist model. Second, my argument for a human right to cultural heritage relied on the centrality of our cultural heritage to our senses of self and, through this, our normative agency. It is likely that this strategy of justifying a human right to cultural heritage will work better with the particularist model. For most of us (though perhaps not all) the local, smaller-scale communities to which we belong, and the cultural heritage associated with them are going to be more significant in determining our overall senses of self.

But this is not to say that the only plausible justification for a human right to universalist cultural heritage would have to rely on normative agency. Among other strategies, one could employ a linkage style argument that would justify a human right to universal cultural heritage by connecting it to some less controversial right (Nickel 2022). For instance, universal cultural heritage is arguably an important component of our education, through being a testament to the history of our species. Therefore, there may be a human right to universal cultural heritage through its importance to a human right to education—a reasonably secure and relatively unproblematic human right. Of course, much more would need to be said about how universal cultural heritage matters to education and whether it is truly important enough to it (or at least the level of education that the human right seeks to guarantee), but it nevertheless is a potentially fruitful strategy to explore.

Even if there is no way to establish a human right to cultural heritage, this is by no means to suggest that there are no obligations to protect such cultural heritage. I did not mean to suggest that our obligations to protect particularist cultural heritage also all stem from there being human rights to said cultural heritage. Not all our obligations are translatable to the language of rights—their sources can be values other than those attaching to rights. Among other things, cultural heritage can be valuable as an aesthetic object, as a piece of humanity's history, as an object of scientific inquiry. Sarah Harding

has argued that cultural heritage has intrinsic value much as nature has been argued to have intrinsic value (Harding 1999). These different understandings of the value of cultural heritage will give rise to different obligations to preserve it and in future research I plan to provide a systematic analysis of this broader range of obligations.

### **A Human Right to Cultural Heritage**

I have argued that there is an individual human right to cultural heritage. I have provided a broadly liberal-inspired account of such rights, *qua* individual rights, that traces their source back to our personal dignity, understood as at least in part constituted by normative agency and autonomy. Cultural heritage is a central condition for our normative agency, via its formative relationship to our sense of self.

As I mentioned above, this is likely not the only way in which an individual human right to cultural heritage could be justified and such alternatives are worthy of further investigation. Some such approaches may appeal to fundamental values that relate to human rights. For instance, some have appealed to the importance of cultural heritage to human flourishing (Harding 1999). Others have relatedly tied it to the Sen-Nussbaum approach to human rights, according to which human rights are grounded in our key capabilities (Hodder 2010). Alternatively, one could also explore a more pragmatic approach to justifying a human right to cultural heritage, such as one suggested by James Nickel. As Nickel notes, justifying a human right does not come down to identifying its philosophical and normative foundations alone (Nickel 2009, 441). A variety of other considerations may be involved in such a justification, ranging from how the right fits with other human rights and how urgent it is to how feasible its implementation would be (*ibid.*).<sup>136</sup>

Importantly, one may not be fully satisfied with a picture of human rights to cultural heritage understood in individual terms alone. Considering this, in future work I plan to provide an account of a group human right to cultural heritage. Cultural rights are

---

<sup>136</sup> Nickel identifies six pragmatic criteria for the justification of a human right. A justified right will (1) fit the general idea of human rights, (2) be sufficiently important, (3) respond to recurrent threats, (4) require the modality of rights rather than some weaker norm, (5) impose burdens on the duty-bearers that are not wrongful or excessively heavy, and (6) be feasible in most of the world's countries today.

often seen as canonical group rights. And while it is certainly possible to present some such rights as individual—as I have hope to have shown here—we may be missing an important part of the picture if we restrict our focus to individual terms alone. First, cultural heritage is unquestionably a communal good. It is difficult to imagine how one could have genuine access to cultural heritage, especially understood in the present-centred, constructionist terms that I have identified it as being, without the context of the cultural community. In turn, rights to cultural heritage cannot exist without solidarity with others.

Similarly, there are certain harms that we simply cannot seem to capture without reference to groups as units that do not non-trivially reduce to individuals. Consider the destruction of cultural heritage in the context of genocide and the social death of the targeted group that so often follows. Here, no doubt, severe harm is done to individuals, resulting in individual human rights violations. Despite this, the very notion of social death—a definitive feature of genocide (Card, *ibid.*)—is something that primarily applies to communities; indeed, the definitive feature of genocide is that it is a crime committed first and foremost against a group.

Considering this, we need an exploration of *a group right*—a right that is held by groups in and of themselves as opposed to individuals alone that make said groups up—and what is it that this right is grounded in. The first step is going to be providing criteria for a group to be a legitimate right holder. Unlike individuals, not all groups have the same moral status. Compare a national group—a canonical cultural group that is said to have group rights—to a group of left-handed Tesco shoppers. What makes the former a legitimate right holder and the latter not? Once this question is answered, one potential way to go in grounding a group right to cultural heritage would employ a similar strategy to the one I used here. Much like in my analysis of individual rights to cultural heritage, one would then need to assume that agency is the normative basis for human rights, but this time look at how this concept attaches to collectives as opposed to individuals alone. In brief, such a strategy in justifying a group human right to cultural heritage would involve establishing that much in the same way as cultural heritage is integral to the formation of our individual senses of self—in the formation of the “I”—it is equally, if not more so, crucial for the formation of the collective “we”. If we want to make sense of collective human rights such as a right to self-determination, which I take to be



parallel (though not entirely analogous) to a right to individual autonomy (individual self-determination), much like was the case with individual agency, we need to get clear on the conditions for it. And one such condition, for either individual or collective self-determination, is having a relatively stable and secure sense of self, either individual or collective.

## Bibliography

- Abu-Lughod, L. 2013. *Do Muslim Women Need Saving?* Cambridge, MA: Harvard University Press.
- Abu-Lughod, L. 1991. "Writing Against Culture." In *Recapturing Anthropology: Working in the Present*, edited by R. G. Fox. Santa Fe: School of American Research Press.
- Alijeva, L. 2017. "Left Behind? A Critical Study of the Russian-speaking Minority Rights to Citizenship and Language in the Post-Soviet Baltic States. Lessons from Nationalising Language Policies." *International Journal of Minority and Group Rights* 484-536.
- Appiah, K. A. 2007. *The Ethics of Identity*. Princeton: Princeton University Press.
- . 2016. *There Is No Such Thing As Western Civilization*. Accessed 03 01, 2022.  
<https://www.theguardian.com/world/2016/nov/09/western-civilisation-appiah-reith-lecture>.
- Araoz, G. 2013. "Conservation Philosophy and Its Development: Changing Understandings of Authenticity and Its Significance." *Heritage and Society* 144-154.
- Arizpe, L., and C. Amescua. 2013. *Anthropological Perspectives on Intangible Cultural Heritage*. New York: Springer.
- Ashford, E. 2008. "The Duties Imposed by the Human Right to Basic Necessities'." In *Freedom from Poverty as a Human Rights: Who owes What to the Very Poor?*, edited by T. Pogge, 183–218. Oxford: Oxford University Press.
- Assmann, Aleida. 2008. "Memory, Individual and Collective." In *The Oxford Handbook of Contextual Political Analysis*, by R. E. Goodin and C. Tilly, edited by R. E. Goodin and C. Tilly. Oxford: Oxford University Press.
- Bauböck, R., B. Perchinig, and W. Sievers. 2007. *Citizenship Policies in the New Europe*. Amsterdam: Amsterdam University Press.
- Beddard, R. 1999. "Duties of Individuals Under International and Regional Human Rights Instruments." *The International Journal of Human Rights* 30-48.
- Beitz, C. 2013. "Human Dignity in the Theory of Human Rights: Nothing But a Phrase?" *Philosophy and Public Affairs* 41 (3): 259-290.
- . 2009. *The Idea of Human Rights*. New York: Oxford University Press.

- Benhabib, S. 2002. *The Claims of Culture: Equality and Diversity in the Global Era*. Princeton : Princeton University Press.
- Bentham, J. 1987. "Anarchical Fallacies." In *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man*, edited by J. Waldron. London: Routledge.
- Besson, S. 2017. "Sources of International Human Rights Law: How General is General International Law?" In *The Oxford Handbook of the Sources of International Law*, edited by S. Besson and J. d'Aspremont. Oxford: Oxford University Press.
- Besson, S. 2015. "The Bearers of Human Rights' Duties and Responsibilities: A Quiet (R)Evolution?" *Social Philosophy and Policy* 244-268.
- Bevan, R. 2006. *The Destruction of Memory: Architecture at War*. London: Reaktion Books.
- Bicknell, J., C. Korsmeyer, and J. Judkins. 2019. *Philosophical Perspectives on Ruins, Monuments, and Memorials*. New York: Routledge.
- Blake, J. 2015. *International Cultural Heritage Law*. Oxford: Oxford University Press.
- Borschmann, G. 2020. "Report Reveals Rio Tinto Knew the Significance of 46,000-year-old Rock Caves Six Year Before It Blasted Them." *ABC News*. 5 06. Accessed 02 21, 2022. <https://www.abc.net.au/news/2020-06-05/rio-tinto-knew-6-years-ago-about-46000yo-rock-caves-it-blasted/12319334>.
- Brison, S. 1999. "Trauma Narratives and the Remaking of the Self." In *Acts of Memory: Cultural Recall in the Present*, edited by M. Bal, J. Crewe and L. Spitzer. Hanover: University Press of New England.
- Bryant, J. 2016. *10 of the best European cities for art deco design*. 8 September. Accessed November 11, 2020. <https://www.theguardian.com/travel/2016/sep/08/10-best-european-cities-for-art-deco-design>.
- Buchanan, A. 2013. *The Heart of Human Rights*. Oxford: Oxford University Press.
- Budianski, S. 2021. *Journey to the Edge of Reason: The Life of Kurt Gödel*. Oxford: Oxford University Press.
- Burton, M. 2021. "Aboriginal Groups Criticise Australian State's Heritage Bill." *Reuters*. 17 11. Accessed 02 19, 2022. <https://www.reuters.com/business/sustainable-business/western-australian-consider-aboriginal-heritage-protection-bill-2021-11-17/>.
- Card, C. 2003. "Genocide and Social Death." *Hypatia* 63-79.
- Cassirer, E. 1944. *An Essay on Man*. New Haven: Yale University Press.
- . 1946. *Language and Myth*. New York: Dover Publications .

- . 1962. *Philosophy of Symbolic Forms, Book I (Language)*. New Haven: Yale University Press.
- Cecco, L. 2019. *Canada: One Indigenous Group Accuses Other of Cultural Appropriation*. 09 04. Accessed 03 12, 2022.  
<https://www.theguardian.com/world/2019/apr/09/canada-indigenous-music-awards-inuit-cree-cultural-appropriation>.
- Centlivres, Pierre. 2008. "The Controversy over the Buddhas of Bamiyan ." *South Asia Multidisciplinary Academic Journal* .
- CESCR. 2009. *General Comment no. 21 Right of Everyone to Take Part in Cultural Life*. Geneva: United Nations. Accessed February 14, 2022.  
<https://digitallibrary.un.org/record/679354?ln=en>.
- Chow, P. Y. S. 2014. "Culture as Collective Memories: An Emerging Concept in International Law and Discourse on Cultural Rights." *Human Rights Law Review* 14: 611-646.
- Christman, J. 2009. *The Politics of Persons*. Cambridge: Cambridge University Press.
- Christman, J. 2008. "Why Search for Lost Time?" In *Practical Identity and Narrative Agency*, edited by K. Attkins and C. Mackenzie, 146-167. New York: Routledge.
- Clapham, A. 2019. "Human Rights Obligations for Non-State Actors: Where are We Now?" In *Doing Peace the Rights Way: Essays in International Law and Relations in Honour of Louise Arbour*, edited by F. Lafontaine and F. Larocque. Intersentia.
- Clifford, J., and G. Marcus. 1968. *Writing Culture: The Politics and Poetics of Ethnography*. Los Angeles: University of California Press.
- Coleman, E. 2006. "Cultural Property and Collective Identity." In *Returning (to) Communities: Theory, Culture and Political Practice of the Communal*, edited by S. Herbrechter and S. Higgins. New York: Rodopi.
- Collins, S. 2016. "The Claims and Duties of Socioeconomic Human Rights." *Philosophical Quarterly* 701-722.
- Cruft, R. 2019. *Human Rights, Ownership and the Individual*. Oxford: Oxford University Press.
- Cruft, R., S. M. Liao, and M. Renzo. 2016. "Introduction." In *Philosophical Foundations of Human Rights*, edited by R. Cruft, S. M. Liao and M. Renzo. Oxford: Oxford University Press.

- Cruz, Miranda Zapor. 2014. "The Role of Catholicism in the Development of Lithuanian National Identity." *Church History and Religious Culture* 94.
- Davidavičiūtė, Rasa. 2021. "Cultural Heritage, Genocide, and Normative Agency ." *Journal of Applied Philosophy*.
- del Valle, S. 2017. "(Re)discovering Duties: Individual Responsibility in the Age of Rights." *Minnesota Journal of International Law* 189-245.
- Desai, M. 1996. "From Vienna to Beijing: Women's human rights activism and the human rights community." *The New Political Science* 107-119.
- Djap Wurrung Embassy. 2020. *Protect Sacred Trees*. Accessed 03 05, 2022. <https://dwembassy.com/why-we-are-here/>.
- Donders, Y. 2019. "Cultural Heritage and Human Rights." In *Oxford Handbook of International Cultural Heritage Law*, edited by F. Francioni and A. Vrdoljak. Oxford: Oxford University Press.
- Drėmaite, M. 2018. *Optimizmo Architektūra: Kauno Fenomenas 1918-1940*. Vilnius: Lapas.
- Dudai, E. 2016. "Personal Memory: Is it Personal, Is it Memory?" *Memory Studies* 9 (3): 275-283.
- Dworkin, R. 1985. *A Matter of Principle* . London: Harvard University Press.
- . 2006. *Is Democracy Possible Here?* Princeton: Princeton University Press.
- Eriksen, H. 2001. "Between universalism and relativism: A critique of the UNESCO concepts of culture." In *Culture and Rights: Anthropological Perspectives*, edited by J. K. Cowan, M. B. Dembour and R. A. Wilson. Cambridge: Cambridge University Press.
- Etnison, A. 2013. "Human Rights, Claimability and the Uses of Abstraction." *Utilitas* 463-486.
- Etnison, A. 2018. "Introduction." In *Human Rights: Moral or Political?*, edited by A. Etnison, 1-48. Oxford: Oxford University Press.
- Etnison, A. 2020. "What's So Special About Human Dignity?" *Philosophy and Public Affairs*.
- European Commission. 2022. *European Heritage Label Sites*. Accessed February 09, 2022. <https://ec.europa.eu/culture/cultural-heritage/initiatives-and-success-stories/european-heritage-label-sites>.
- European Parliament. 2018. "Cultural Heritage In EU Policies." Brussels.
- Fagan, A. 2015. *Human Rights*. Accessed January 12, 2022. <https://iep.utm.edu/hum-rts/>.

- Feinberg, J. 1966. "Duties, Rights and Claims." *American Philosophical Quarterly* 3 (2): 137-144.
- . 1973. *Social Philosophy*. Englewood Cliffs: Pears.
- Fernandez, M. P. 2019. *Towards a Human Rights Approach to Cultural Heritage Protection*. Accessed 03 15, 2022. <https://www.heritageinwar.com/single-post/2019/07/02/towards-a-human-rights-approach-to-cultural-heritage-protection>.
- Ferri, M. 2018. "The Recognition of the Right to Cultural Identity Under (and Beyond) International Human Rights Law." *Journal of Law, Social Justice and Global Development* (22): 15-40.
- Fivush, R., T. Habermas, T. E. A. Waters, and W. Zaman. 2011. "The Making of Autobiographical Memory: Intersections of Culture, Narratives and Identity." *International Journal of Psychology* 46 (5): 321-345.
- Francioni, F., and A. F. Vrdoljak, . 2020. *The Oxford Handbook of International Cultural Heritage Law*. Oxford: Oxford University Press.
- Francioni, F., and J. Gordley. 2013. *Enforcing International Cultural Heritage Law*. Oxford: Oxford University Press.
- Frowe, H. 2019. "The Duty to Remove Statues of Wrongdoers ." *Journal of Practical Ethics* 7 (3): 1-31.
- Frowe, H., and D. Matravers. 2019. "Conflict and Cultural Heritage: A Moral Analysis of the Challenges of Heritage Protection." *J Paul Getty Trust Occasional Papers in Cultural Heritage Policy*.
- Gagnepain, P., T Vallée, S. Heiden, M. Decorde, J. L. Gauvain, M. Laurent, C. Klein-Peschanski, F. Viader, D. Peschanski, and F. Eustache. 2020. "Collective Memory Shapes the Organization of Individual Memories in the Medial Prefrontal Cortex." *Nature Human Behaviour* 189-200.
- Gaskell, I., and A. W. Eaton. 2009. "Do Subaltern Artifacts Belong in Art Museums?" In *The Ethics of Cultural Appropriation*, edited by O. Young and C. Brunk, 235-268. Malden, MA: Blackwell Publishing.
- Gaubert, J. 2019. *UNESCO wipes Belgian festival from heritage list over 'racist floats'*. 16 12. Accessed 02 16, 2022. <https://www.euronews.com/2019/12/14/unesco-wipes-belgian-festival-from-heritage-list-over-racist-floats>.
- Geertz, C. 1973. *The Interpretation of Cultures*. New York: Basic Books.

- Gilbert, P. 2016. "Human Rights, Human Dignity, and Power." In *Philosophical Foundations of Human Rights*, edited by R. Cruft, S. M. Liao and M. Renzo, 196-213. Oxford: Oxford University Press.
- Glendinning, M. 2013. *The Conservation Movement: A History of Architectural Preservation*. New York : Routledge .
- Goodale, M. 2018. *Letters to the Contrary: A Curated History of the UNESCO Human Rights Survey*. Stanford: Stanford University Press.
- Gould, C. 1988. *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society*. Cambridge: Cambridge University Press.
- . 2009. "Retrieving Positive Freedom and Why It Matters." SSRN. Accessed 03 06, 2022. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1449588](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1449588).
- Graham, B., and P. Howard, . 2008. *The Ashgate Research Companion to Heritage and Identity*. Hampshire, UK: Ashgate.
- Green, A. 2004. "Individual Remembering and 'Collective Memory': Theoretical Presuppositions and Contemporary Debates." *Oral History* 35-44.
- Griffin, J. 2001. "First Steps in an Account of Human Rights." *European Journal of Philosophy*.
- . 2008. *On Human Rights*. Oxford: Oxford University Press.
- Groch, S. 2020. "What Do These Sacred Trees Tell Us About Aboriginal Heritage in Australia?" *The Sydney Morning Herald*, 31 October.
- Handler, R. 1991. "Who Owns the Past? History, Cultural Property, and the Logic of Possessive Individualism." In *The Politics of Culture*, edited by B. Williams. Washington: Smithsonian Institution.
- Harding, S. 1999. "Value, Obligation and Cultural Heritage." *Arizona State Law Review* 291-354.
- Hawthorne, L. 2011. "Constitution and Contract: Human Dignity, the Theory of Capabilities and Existenzgrundlage in South Africa." *SUBB Jurisprudencia* 27.
- Henry, L. M. 2011. "The Jurisprudence of Dignity." *University of Pennsylvania Law Review* 160: 169-232.
- Heyd, T. 2003. "Rock Art Aesthetics and Cultural Appropriation." *The Journal of Aesthetics and Art Criticism* 37-46.
- Hodder, I. 2010. "Cultural Heritage Rights: From Ownership and Descent to Justice and Well-being." *Anthropological Quarterly* 861-882.

- Hodgson, D. 2003. *Individual Duty Within a Human Rights Discourse*. New York: Routledge.
- Hoggart, R. 1978. *An Idea and Its Servants—UNESCO From Within*. London: Chatto and Windus.
- Huxley, Julian. 1946. *UNESCO: Its Purpose and Philosophy*. Paris: UNESCO.
- ICC. 2016. *Al Mahdi Case*. 27 09. Accessed 02 2022. <https://www.icc-cpi.int/mali/al-mahdi>.
- ICOMOS. 1982. “Deschambault Declaration.” *ICOMOS*. 04. Accessed 02 28, 2022. <https://www.icomos.org/en/support-us/179-articles-en-francais/ressources/charters-and-standards/192-the-deschambault-charter>.
- . 1994. “Nara Document On Authenticity.” *ICOMOS*. Accessed 03 01, 2022. <https://www.icomos.org/charters/nara-e.pdf>.
- . 2013. “The Burra Charter.” *ICOMOS Open Archive*. Accessed 02 28, 2022. <http://openarchive.icomos.org/id/eprint/2145/>.
- . 1964. “The Venice Charter.” *ICOMOS*. Accessed 02 28, 2022. [https://www.icomos.org/charters/venice\\_e.pdf](https://www.icomos.org/charters/venice_e.pdf).
- Jensen, A. K. 2012. *Ernst Cassirer*. Accessed 03 03, 2022. <https://iep.utm.edu/cassirer/>.
- Jobson, L, and R. O’Kearney. 2008. “Cultural Differences in Retrieving Self-Defining Memories.” *Journal of Cross-Cultural Psychology* 39 (1): 75-80.
- Jokilehto, J. 2012. “Human Rights and Cultural Heritage: Observations on the Recognitions of Human Rights in the Internationals Doctrine.” *International Journal of Heritage Studies* 226-230.
- Kaasik-Krogerus, S. 2021. “‘Being’, ‘Becoming’ and ‘Challenging’ European: Subject Positions in the European Heritage Label.” *Europe-Asia Studies* 73 (5): 787-806.
- Kateb, G. 2011. *Human Dignity*. Cambridge, MA: The Belknap Press of Harvard University Press.
- . 2011. *Human Dignity*. Harvard: Harvard University Press.
- Killmister, S. 2018. “Deriving Human Rights From Human Dignity: A Novel Political Approach.” In *Political and Legal Approaches to Human Rights*, edited by T. Campbell and K. Bourne, 56-69. New York: Routledge.
- Killmister, S. 2009. “Dignity: Not Such a Useless Concept.” *Journal of Medical Ethics* 160-163.
- Korsmeyer, C. 2018. *Things: In Touch With the Past*. Oxford: Oxford University Press.



- Krausz, Tibor. 2017. *A whole new Jew: The antisemite who turned out to be one of the Jews he despised*. 12 February. Accessed February 04, 2022. <https://www.jpost.com/jerusalem-report/a-whole-new-jew-478706>.
- Kuper, A. 1999. *Culture: The Anthropologists' Account*. Cambridge, MA: Harvard University Press .
- Kymlicka, W. 1995. *Multicultural Citizenship*. Oxford: Oxford University Press.
- Lear, J. 2008. *Radical Hope*. Cambridge, MA: Harvard University Press.
- Liao, S. M. 2015. *A Right to Be Loved*. Oxford: Oxford University Press.
- Lixinski, L. 2019. *International Heritage Law for Communities*. Oxford: Oxford University Press.
- Lopez, C. 2021. "Holding Multinational Corporations Accountable for Human Rights." *Project Syndicate*. 22 10. Accessed 02 21, 2022. <https://www.project-syndicate.org/commentary/un-treaty-on-multinational-corporations-human-rights-standards-by-carlos-lopez-3-2021-10>.
- Lowenthal, D. 1998. *The Heritage Crusade and the Spoils of History*. Cambridge: Cambridge University Press.
- . 2015. *The Past is a Foreign Country*. Cambridge: Cambridge University Press.
- Luft, S. 2015. *The Space of Culture: Towards a Neo-Kantian Philosophy of Culture*. Oxford: Oxford University Press.
- Lyons, D. 1970. "The Correlativity of Rights and Duties." *Noûs* 45-55.
- Margalit, A., and J. Raz. 1990. "National Self-Determination." *The Journal of Philosophy* 439-461.
- Marra, J. 2015. "Humor as a Symbolic Form." In *The Philosophy of Ernst Cassirer*, edited by J. T. Friedman and S. Luft. Berlin: De Gruyter.
- Matthes, E. H. 2019. "Cultural Appropriation and Oppression." *Philosophical Studies* 1003-1013.
- Matthes, E. H. 2016. "Cultural Appropriation Without Cultural Essentialism?" *Social Theory and Practice* 343-366.
- Matthes, E. H. 2013. "History, Value, and Irreplaceability." *Ethics* 35-64.
- Matthes, E. H. 2018a. "Saving Lives or Saving Stones? The Ethics of Cultural Heritage Protection in War." *Public Affairs Quarterly* 67-84.
- . 2018b. *The Ethics of Cultural Heritage*. Accessed 03 12, 2022. <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=ethics-cultural-heritage>.

- Matthes, E. H. 2018c. "Who Owns Up to the Past? Heritage and Historical Injustice." *Journal of American Philosophical Association* 87-104.
- Michaels, W. B. 1995. *Our America: Nativism, Modernism, and Pluralism*. Durham, NC: North Carolina University Press.
- Michelmore, K. 2020. "Rio Tinto Didn't Tell Traditional Owners There Were Options To Save Ancient Juukan Gorge Rock Shelters." *ABC News*. 07 08. Accessed 02 21, 2022. <https://www.abc.net.au/news/2020-08-07/rio-tinto-had-options-to-save-juukan-gorge-rock-shelters/12534092>.
- Minority Rights Group International. 2016. "The State of the World's Minorities and Indigenous Peoples 2016-Case Study: Hazara Heritage and the Uncertain Future of the Buddhas of Bamiyan." *Refworld*. Accessed February 13, 2022. <https://www.refworld.org/docid/5796080ec.html>.
- Moon, E. 2019. *Why the Notre Dame Fire Is a Loss of Collective Memory*. 17 04. Accessed 03 04, 2022. <https://psmag.com/news/why-the-notre-dame-fire-is-a-loss-of-collective-memory>.
- Moyn, S. 2016. *Rights vs. Duties: Reclaiming Civic Balance*. 16 May. Accessed September 20, 2020. <http://bostonreview.net/books-ideas/samuel-moyn-rights-duties>.
- Musschenga, A. W. 1998. "Intrinsic Value as a Reason for the Preservation of Minority Cultures." *Ethical Theory and Moral Practice* 201-225.
- Nelson, S. S. 2014. *Leader of Anti-Semitic Party In Hungary Finds Out He's Jewish*. 27 May. Accessed February 4, 2022. <https://www.npr.org/2014/05/27/316269140/leader-of-anti-semitic-party-in-hungary-finds-out-he-s-jewish?t=1643944308050>.
- Nguyen, C. T., and M. Strohl. 2019. "Cultural Appropriation and the Intimacy of Groups." *Philosophical Studies* 981-1002.
- Nickel, J. 2009. "A Defense of Welfare Rights as Human Rights." In *Contemporary Debates in Political Philosophy*, edited by T. Christiano and J. Christman, 437-454. Chichester: Blackwell Publishing.
- Nickel, J. 1993. "How Human Rights Generate Duties to Protect and Provide." *Human Rights Quarterly* 77-86.
- . 2019. *Human Rights*. Accessed 03 14, 2022. <https://plato.stanford.edu/entries/rights-human/>.

- Nickel, J. 2022. "Linkage Arguments For and Against Rights." *Oxford Journal of Legal Studies* 27-47.
- Nielsen, B. 2011. "UNESCO and the 'Right' Kind of Culture: Bureaucratic Production and Articulation." *Critique of Anthropology* 273-292.
- Nussbaum, M. 2003. "Capabilities as Fundamental Entitlements: Sen and Social Justice." *Feminist Economics* 33-59.
- Nussbaum, M. 1997. "Human Rights Theory: Capabilities and Human Rights." *Fordham Law Review* 66: 273-300.
- . 2000. *Women and Human Development: The Capabilities Approach*. Cambridge, UK: Cambridge University Press.
- OHCHR. 2016. "Cultural rights." *OHCHR*. 16 08. Accessed 03 06, 2022.  
<https://www.ohchr.org/en/issues/culturalrights/pages/annualreports.aspx>.
- OHCHR. 2008. "Fact Sheet No 33: Frequently Asked Questions on Economic, Social and Cultural Rights." 1-46.
- OHCHR. 1995. *Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children*. Geneva: UN Office of the High Commissioner for Human Rights.
- . 2000. "General Comment No 14: The Right to the Highest Attainable Standard of Health." *Refworld*. 11 08. Accessed 03 05, 2022.  
<https://www.refworld.org/pdfid/4538838d0.pdf>.
- . 1996-2021. *Key Concepts on ESCRs--What Are the Obligations of States on Economic, Social and Cultural Rights?* Accessed February 14, 2022.  
<https://www.ohchr.org/en/issues/escr/pages/whataretheobligationsofstatesone scr.aspx>.
- . 2011. "Report of the independent expert in the field of cultural rights, Farida Shaheed." *OHCHR*. Accessed 03 05, 2022. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/122/04/PDF/G1112204.pdf?OpenElement>.
- OHCHR. 2012. *The Corporate Responsibility to Respect Human Rights*. Geneva: Office of the High Commissioner for Human Rights.
- Okin, S. M. 1999. *Is Multiculturalism Bad for Women?* Princeton, NJ: Princeton University Press.
- O'Neill, O. 2005. "The Dark Side of Human Rights." *International Affairs* 81 (2): 427-439.

- O'Nills, W. B. 2020. "Risking Civilian Lives to Avoid Harm to Cultural Heritage?" *Journal of Ethics and Social Philosophy*.
- O'Nils, W. B., and J. T. Thomas. 2020. "On the Ethics of Reconstructing Destroyed Cultural Heritage Monuments." *Journal of the American Philosophical Association* 483-501.
- Parsons, T. 1999. *The Social System*. New York: Routledge.
- Parvin, P. 2008. "What's Special About Culture? Identity, Autonomy, and Public Reason." *Critical Review of International Social and Political Philosophy* 11 (3): 315-333.
- Paul, S. 2021. "Australian Mining State Passes Aboriginal Heritage Protection Law." *Reuters*. 15 12. Accessed 02 19, 2022. <https://www.reuters.com/world/asia-pacific/australian-mining-state-passes-aboriginal-heritage-protection-law-2021-12-15/>.
- Rawls, J. 1999. *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- Raz, J. 2010. "Human Rights in the Emerging World Order." *Trnasnational Legal Theory* 1 (3): 31-47.
- Raz, J. 2018. "On Waldron's Critique of Raz on Human Rights." In *Human Rights: Moral or Political?*, edited by A. Etinson. Oxford: Oxford University Press.
- Raz, J. 2018. "On Waldron's Critique of Raz on Human Rights." In *Human Rights: Moral or Political*, edited by A. Etinson. Oxford: Oxford University Press.
- Research Division of the European Court of Human Rights. 2017. *Cultural Rights in the case-law of the European Court of Human Rights*. Brussels: Council of Europe.
- Reuters. 2021. "Aboriginal Group Files U.N. Complaint Over Heritage Bill." *Reuters*. 08 09. Accessed 02 19, 2022. <https://www.reuters.com/world/asia-pacific/aboriginal-group-files-un-complaint-over-heritage-bill-2021-09-07/>.
- Reyes, V. 2019. *'World Heritage' Site Selection Is Eurocentric - And That Shapes Which Historic Places Get Love and Money*. 24 05. Accessed 03 02, 2022. <https://theconversation.com/world-heritage-site-selection-is-eurocentric-and-that-shapes-which-historic-places-get-love-and-money-115898>.
- Rimkutė, L. 2016. *Tapatumo Svarba Kauno Miestui*. 09 02. Accessed 03 15, 2022. <http://kamane.lt/Kamanes-tekstai/Architektura/Tapatumo-svarba-Kauno-miestui>.
- Rogers, R. A. 2006. "From Cultural Exchange to Transculturaion: A Review and Reconceptualization of Cultural Appropriation." *Communication Theory* 474-503.

- Rosen, M. 2012. *Dignity: Its History and Meaning*. Cambridge, MA: Harvard University Press.
- Sacks, J. 2022. *Key to healing humankind's heart of darkness*. 26 January. Accessed February 22, 2022. <https://www.thejewishstar.com/stories/key-to-healing-humankinds-heart-of-darkness,21099?>
- Sahlins, M. 1976. *Culture and Practical Reason*. Chicago: The University of Chicago Press.
- Scarre, C., and G. Scarre. 2006. *The Ethics of Archaeology: Philosophical Perspectives on Archaeological Practice*. Cambridge: Cambridge University Press.
- Schachter, O. 1983. "Human Dignity as a Normative Concept." *American Journal of International Law* 77: 848-854.
- Sehlikoglu, S. 2018. "Muslim Women's Agency and Feminist Anthropology of the Middle East." *Contemporary Islam* 73-92.
- Sen, A. 2004. "Elements of Human Rights." *Philosophy and Public Affairs* 32 (4): 315-356.
- . 2009. *The Idea of Justice*. Cambridge, MA: Harvard University Press.
- Shaheed, F. 2011. "The Report of the Independent Expert in the Field of Cultural Rights, Ms. Farida Shaheed." *Refworld*. Accessed 02 28, 2022. <https://www.refworld.org/docid/50f01fb12.html>.
- Shehzad, M. 2004. "The Rediff Interview/Mullah Omar." *Rediff*. 12 April. Accessed March 16, 2022. <https://www.rediff.com/news/2004/apr/12inter.htm>.
- Shelton, D, and A. Gould. 2013. "Positive and Negative Obligations." In *Oxford Handbook of International Human Rights Law*, edited by D. Shelton. Oxford: Oxford University Press.
- Shestack, J. 1998. "The Philosophical Foundations of Human Rights." *Human Rights Quarterly* 201-234.
- Shue, H. 1980. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. Princeton: Princeton University Press.
- Silberman, N. A. 2012. "Heritage Interpretation and Human Rights: Documenting Diversity, Expressing Identity, or Establishing Universal Principles?" *International Journal of Heritage Studies* 245-256.
- Silverman, H., and D. F. Ruggles, . 2007. *Cultural Heritage and Human Rights*. New York: Springer.
- Sluga, G. 2010. "UNESCO and the (One) World of Julian Huxley." *Journal of World History* 21 (3): 393-418.

- Smith, G., V. Law, A. Wilson, A. Bohr, and E. Allworth. 1998. *Nation-Building in the Post-Soviet Borderlands: The Politics of National Identities*. Cambridge, UK: Cambridge University Press.
- Smith, L. 2006. *Uses of Heritage*. London: Routledge.
- Sreenivasan, G. 2016. "Healthcare and Human Rights: Against the Split Duty Gambit." *Theoretical Medicine and Bioethics* 343-364.
- Tasioulas, J. 2002. "Human Rights, Universality and the Values of Personhood: Retracting Griffin's Steps." *European Journal of Philosophy* 79-100.
- Tasioulas, J. 2016. "On The Foundations of Human Rights." In *Philosophical Foundations of Human Rights*, edited by R. Cruft, S. M. Liao and M. Renzo, 45-71. Oxford: Oxford University Press.
- Tasioulas, J., and E. Vayena. 2016. "The Place of Human Rights and the Common Good in Global Health Policy." *Theoretical Medicine and Bioethics* 365-382.
- Taylor, C. 1979. "Atomism." In *Powers, Possessions and Freedom: Essays in Honour of C.B. Macpherson*, edited by A. Kontos. Toronto: University of Toronto Press.
- . 1989. *Sources of the Self*. Cambridge, MA: Harvard University Press.
- Taylor, E. 2016. "Groups and Oppression." *Hypatia* 520-536.
- Theilen, J. T. 2021. "The Inflation of Human Rights: A Deconstruction." *Leiden Journal of International Law* 831-854.
- Thomas, N. 2017. "How Native Americans are Reclaiming Their History." *Apollo: The International Art Magazine*. 29 07. Accessed 02 19, 2022. <https://www.apollo-magazine.com/how-native-americans-are-reclaiming-their-history/>.
- Tolz, V. 1998. "Forging the Nation: National Identity and Nation Building in Post-Communist Russia." *Europe-Asia Studies* 993-1022.
- Tomalty, J. 2014. "The force of the claimability objection to the human right to subsistence." *Canadian Journal of Philosophy* 1-17.
- Trouillot, M-R. 2003. "Adieu, Culture: A New Duty Arises." *Global Transformations* 97-116.
- Truwant, Simon. 2018. "From the Critique of Reason to a Critique of Culture: Cassirer's Transformation of Kant's Transcendental Philosophy." *Epoché* 85-104.
- Tylor, E. B. 1871. *Primitive Culture Vol I*. Mineola, NY: Dover.
- UNESCO. 1946. *Constitution of the United Nations Educational, Scientific and Cultural Organization*. Paris: UNESCO.

- . 1972. “Convention Concerning the Protection of the World Cultural Heritage.” 16 11. Accessed 02 28, 2022. <https://www.refworld.org/docid/4042287a4.html>.
- . 2003a. “Convention for the Safeguarding of the Intangible Cultural Heritage.” *UNESCO Intangible Cultural Heritage*. 17 10. Accessed 02 28, 2022. <https://ich.unesco.org/en/convention>.
- . 2001a. “Convention on the Protection of the Underwater Cultural Heritage.” Accessed March 2022. <https://unesdoc.unesco.org/ark:/48223/pf0000126065>.
- . 2001b. “Declaration on Cultural Diversity.” *Refworld*. 02 11. Accessed 02 28, 2022. <https://www.refworld.org/docid/435cbcd64.html>.
- . 2003b. “Draft UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage.” <https://unesdoc.unesco.org/ark:/48223/pf0000130780>.
- . 1964. “Recommendation regarding Illicit Transfer of Cultural Objects.” *Getty*. Accessed 02 28, 2022. [https://www.getty.edu/conservation/publications\\_resources/research\\_resources/charters/charter13.html](https://www.getty.edu/conservation/publications_resources/research_resources/charters/charter13.html).
- . 1954. “The Hague Convention For the Protection of Cultural Property in the Event of Armed Conflict.” *Refworld*. 14 05. Accessed 02 28, 2022. [https://en.unesco.org/sites/default/files/1954\\_Convention\\_EN\\_2020.pdf](https://en.unesco.org/sites/default/files/1954_Convention_EN_2020.pdf).
- . 1945. *UNESCO Constitution*. 16 11. Accessed 02 27, 2022. [http://portal.unesco.org/en/ev.php-URL\\_ID=15244&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html).
- UNESCO. 2003. *World Heritage Nomination: Cultural Landscape and Archaeological Remains of the Bamiyan Valley*. Paris.
- UNICEF. 2021. *Harmful Practices*. 06. Accessed 02 18, 2022. <https://www.unicef.org/protection/harmful-practices>.
- University of Nottingham. 2007. *Sites of Memory: The Slave Trade and Abolition*. Accessed 03 11, 2022. <http://antislavery.ac.uk/items/show/550>.
- Valentini, L. 2017. “Dignity and Human Rights: A Reconceptualisation.” *Oxford Journal of Legal Studies* 862-885.
- Vasek, K. 1977. “A 30-Year Struggle: The sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights.” *Unesco Courier* 29-30.
- Wahlquist, C., and N. Bucci. 2020. “Chainsaws tearing through my heart!: 50 Arrested As Sacred Tree Cut Down to Make Way for Victorian Highway.” *The Guardian*.

- 27 10. Accessed March 2022. <https://www.theguardian.com/australia-news/2020/oct/27/djab-wurrung-directions-sacred-tree-cut-down-victoria-western-highway-upgrade>.
- Wahlquist, C. 2020. "Rio Tinto blasts 46,000-year-old Aboriginal site to expand iron ore mine." *The Guardian*. 26 05. Accessed 02 19, 2022. <https://www.theguardian.com/australia-news/2020/may/26/rio-tinto-blasts-46000-year-old-aboriginal-site-to-expand-iron-ore-mine>.
- Waldron, J. 2018. "Human Rights: A Critique of the Raz/Rawls Approach." In *Human Rights: Moral or Political*, edited by A. Etinson, 117-139. Oxford: Oxford University Press.
- Waldron, J. 2015. "Is Dignity the Foundation of Human Rights?" In *Philosophical Foundations of Human Rights*, edited by R. Cruft and M. Renzo S. M. Liao. Oxford: Oxford University Press.
- Waldron, J. 1992. "Minority Cultures and the Cosmopolitan Alternative." *University of Michigan Journal of Law Reform* 25 (3, 4).
- Waldron, J. 2000. "What is Cosmopolitan?" *The Journal of Philosophy* 227-243.
- Wang, Q. 2016. "Remembering the Self in Cultural Contexts: A Cultural Dynamic Theory of Autobiographical Memory." *Memory Studies* 9 (3): 395-304.
- WDMIP. 2021. *World Directory of Minorities and Indigenous Peoples*. Accessed 03 12, 2022. <https://minorityrights.org/minorities/russians-4/>.
- Wellman, C. 1999. *The Proliferation of Rights*. Boulder: Westview.
- Wise, L. E. 2017. "Social Death and the Loss of a 'World': An Anatomy of Genocidal Harm in Sudan." *International Journal of Human Rights* 838-865.
- Wyndham, C. 2014. "Reconstructing Afghan Identity: Nation-Building, International Relations and the Safeguarding of Afghanistan's Buddhist Heritage." In *Museums, Heritage and International Development*, edited by P. Basu and W. Modest, 122-143. New York: Routledge.
- Young, B. R. 2022. "Putin Has a Grimly Absolute Vision of the 'Russian World'." *Foreign Policy*, 6 03.
- Young, J. O. 2008. *Cultural Appropriation and the Arts*. Oxford: Blackwell Publishing.
- Young, O., and C. Brunk. 2009. "Introduction." In *The Ethics of Cultural Appropriation*, edited by O. Young and C. Brunk. Malden, MA: Blackwell Publishing.



Zimmerman, D. D. 2015. "Young Arab Muslim Women's Agency Challenging Western Feminism." *Journal of Women and Social Work* 145-157.