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**International Cultural Property Protection and Law:
Ukraine and Beyond**

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Abstract

This project examines the ongoing destruction and theft of Ukrainian cultural heritage by Russian forces since February 2022 in tandem with international cultural property law, and theory, and case studies. By studying relevant cultural property laws and gathering information from associated theories of cultural property nationalism and internationalism, this project examines how these laws and theories apply to modern Ukraine. This thesis utilizes a qualitative approach to analyze theories surrounding cultural property and heritage and explores how these theories influence international law. For a more comprehensive approach, three case studies are used and examined via qualitative historical analysis: Nazi art theft from occupied territories during World War II, the looting of the National Museum of Iraq in 2003, and site destruction by terrorists in Timbuktu in 2012. These case studies demonstrate the changing perceptions and laws surrounding cultural property. By reviewing these case studies in tandem with the Russia-Ukraine war, one can better understand the larger ramifications of cultural property theft and destruction in Ukraine and how applicable laws are shaped by theory.

Keywords: Cultural Property, International Law, Russia-Ukraine War, Iraq Museum 2003, Timbuktu, Ukrainian Cultural Property, International Criminal Court

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Chapter 1: Introduction

On February 27, 2022, the third day of the Russian invasion of Ukraine, Russian forces went to the Ivankiv Historical and Local History Museum in northwestern Ukraine and burned the building to the ground. The local museum had operated since 1981, and some of the more notable pieces in its collection were thirty-two paintings by Ukrainian folk artist Maria Prymachenko, at least twenty of which were destroyed by the fire (“History of the Museum” 2021; Chow and Sansom 2022). One of the museum’s security guards led a small group of men into the fire. After breaking through the glass windows, they saved a few of Prymachenko’s paintings, further emphasizing their importance and prioritization (“Destroying Cultural Heritage” 2024). Prymachenko and her artwork are well known in Ukraine. Her colorful paintings were heavily inspired by Ukrainian nature and folklore, and in the 1970s, her work was featured in a line of national stamps (Chow and Sansom 2022). On the day of the fire, Vyshhorod Historical and Cultural Reserve Director Vlada Lytovchenko shared a video of the museum on Telegram and wrote,

“Russia's armed attack on Ukraine is destroying numerous civilian and cultural heritage sites in Ukraine. Another irreparable loss of Ukraine's historical and cultural heritage is the destruction by the aggressor in these hellish days of the Ivankiv Museum of History and Local Lore, where among many interesting exhibits and thematic exhibitions were the pride and decoration of the well-known Ukrainian artist Maria Prymachenko.” (Left Bank 2022).

Understanding why people and their communities are motivated to protect and preserve cultural property is essential, as these theories inform legal thought. Culture is a crucial aspect of community; cultural property is a tangible reminder of that culture and associated history and identity. Within hours of the attack on the Ivankiv Historical and Local History Museum, the Minister of Culture and Information Policy of Ukraine, Oleksandr Tkachenko, appealed to

UNESCO to deprive Russia of organizational membership and revoke their status as host of the 45th session of the World Heritage Committee (WHC) set to occur later that year (Tkachenko 2022).

Discussions of attacks on cultural property often are in tandem with discussions about cultural identity erasure. When the cultural identity of a group is worn away, so is their shared history and, consequently, dynamics of power and authority. International cultural property laws are relevant to the war in Ukraine because many of the named international conventions are ratified by Ukraine, Russia, and most other nations. Through international cultural property protection laws, this thesis explores not only cultural heritage destruction and looting in Ukraine but also makes comparisons to cultural property destruction in three historical case studies: Chapter 3 explores the systematic plunder by Nazis on Jewish communities during World War II, Chapter 4 examines the National Museum of Iraq's looting in 2003, and Chapter 5 explores the ramifications of the damage done to Timbuktu sites in 2012 as well as the subsequent International Criminal Court case. These three case studies inform my work on the effectiveness of cultural property protection under international law, the potential outcomes for Ukraine, and what criminal proceedings for the destruction of cultural heritage might look like within the current international system. In Chapter 6, I examine the ongoing cultural property destruction and theft in Ukraine by the Russian military, as well as the narratives pushed by the Russian government to justify the war on Ukraine. My examination of the current Ukraine war is informed by historical analysis of the case studies as I look at the broader ramifications of Russian attacks on Ukrainian cultural property.

I examine the Nazi's theft and destruction of cultural property because the subsequent Nuremberg trials shaped the international understanding of human rights law and set precedence

for many laws employed today, such as the 1954 Hague Convention and the 1970 UNESCO Convention. I compare the actions of Nazi officials to the actions of Russian military leaders in Ukraine because they both act on behalf of governments with the intent of erasing culture, and any potential case against a Russian leader would likely have commonalities. Additionally, it is the first time in modern history that someone was convicted for stealing property connected with genocidal intent.

I also explore the looting of the Iraq Museum in 2003 since it is a relatively recent case in which the actions of a state directly resulted in cultural theft. Additionally, the looting presents a case in which no state actors, specifically American soldiers, were legally tried for negligence leading to theft, nor was the United States formally punished under international law. The widespread theft is also an excellent example of how the 1970 UNESCO Convention is utilized in the international legal system. The Iraq Museum looting is relevant to the current situation in Ukraine because although the Iraq looters were civilians and the perpetrators in Ukraine are soldiers, the actions of the United States military did, through gross negligence, create the environment that led to the mass theft. The actions of the Russian military are direct and purposeful theft and destruction of cultural property, but the applicable law is similar in both situations.

The third case study is the destruction of sites in Timbuktu and the results of the International Criminal Court (ICC) trial of Ahmad al-Faqi Al Mahdi for attacking buildings of religious and historical importance. Unlike the Russian soldiers, Al Mahdi is not a state actor but rather acted on behalf of a terrorist organization and believed his motivations to be religious. He is the first and only person thus far to be tried for cultural property destruction on an international scale. The Al Mahdi case also demonstrates how theories of punishment have

changed for cultural property theft and destruction; Rosenberg was hanged for his crimes while Al-Mahdi was sentenced to serve seven years in prison, perhaps the more likely sentence for any Russian officials that are held to account for actions in Ukraine.

These case studies demonstrate the nature of cultural property protections because they highlight evolving perceptions of international cultural property law. Therefore, my research on Ukrainian cultural property destruction in the ongoing Russia-Ukraine war helps the reader understand how international law related to cultural property applies to the current crisis. My analysis is informed by cultural property nationalism and internationalism, legal studies regarding cultural property, and the connections between power, history, and memory. I examine international law and relevant case studies through an interpretative lens. Moreover, dynamics within cultural property law indicate power dynamics between nations and international organizations. In the case of Ukraine, Russia steals and destroys cultural property to aggressively assert its desire to overpower Ukraine.

Strongly codified laws protecting cultural property are relatively new and untested, partially because available technology affects how cultural property theft and destruction are recorded and reported. One of the most infamous cases of cultural property theft is the Nazi Einsatzstab. The evidence for this theft and destruction was overwhelming, given the documentation and photographs of German soldiers with swaths of looted artwork. There is a particularly famous set of pictures depicting several paintings, including the Ghent altarpiece, stashed in an Austrian salt mine after it was stolen from St. Bravo Cathedral in Belgium (Ueno 2014). Technology like photographs and cell phones enable people to document and broadcast crimes in real time. Furthermore, social media allows the average citizen to share their experiences with the world. In the case of the Ivankiv Historical and Local History Museum's

destruction, one of the initial reports of the attack came not through official news channels but from a video of the burning museum posted by Vyshhorod Historical and Cultural Reserve Director Vlada Lytovchenko on Telegram (Left Bank 2022). As Russia continues to steal and damage parts of Ukraine's cultural heritage, Ukrainians continue to photograph and post evidence on the internet. These developments have widened the scope for those paying attention to the aggression.

Chapter 2: Literature Review

Understanding the history of international cultural property protection laws acts as a theoretical foundation for trends we have seen in the development of state and international policies because this history provides a frame of reference for future developments. The field of cultural protection law began to expand in the latter half of the 20th century, with the bedrock in the changing general concept of the rules of war. Although paradoxical, war having rules is not new; traces can be found as far back as the Code of Hammurabi in ancient Babylon, which states, “If any one steal the property of a temple or of the court, he shall be put to death, and also the one who receives the stolen thing from him shall be put to death.”(Hammurabi and King 2008). Seeing the evolution of these laws in the modern era allows one to see better their potential applications and their necessity for cultural property protection.

Relevant Law and History

Legal protections for cultural property continue to change along with international perceptions. One of the earliest examples of cultural property law was surprisingly written amid the American Civil War by University of Columbia professor Francis Lieber, who felt there should be a code of conduct regarding specific sites and places such as hospitals, universities, churches, libraries, classical art, and scientific collections. His suggestion, which would come to be known as the 1863 Lieber Code, also explicitly protected “foundations for the promotion of knowledge” and that if these sites or objects were captured, they could not be damaged or sold (Merryman 1986, 833).

The basic principles of the Lieber Code were mirrored in several attempts to adopt a comprehensive body of law that would clarify how nations should protect cultural and educational sites in enemy or occupied territory. One such attempt at codifying cultural

protections was pitched as part of the 1874 “Declaration of Brussels.” The specific provision was never adopted due to opposition from the British government, but fifteen nations, including Russia, attended the conference. Great Britain was against signing the document because the government hesitated to support changes to the existing state of maritime law or naval warfare, a status quo from which they greatly benefited (Dowdeswell 2017). The failed declaration, like the Lieber Code, did not explicitly refer to the concept of “cultural property” but did protect things that fall under the modern definition, stating that,

“The property of parishes (communes), or establishments devoted to religion, charity, education, arts and sciences, although belonging to the State, shall be treated as private property. Every seizure, destruction of, or willful damage to, such establishments, historical monuments, or works of art or science, shall be prosecuted by the competent authorities.” (Merryman et al. 2007, 15).

By 1874, the British government had acquired many objects of cultural and historical importance from their original contexts with questionable provenance. These objects are the subject of many consequent debates and laws regarding repatriation of objects that were taken in violation of the Lieber Code. Lieber’s original idea of protecting places of religion or education is present in the 1874 Declaration of Brussels, but the overt element of prosecution is new to the 20th century.

Furthermore, a significant development occurred in May 1899 with the first Hague Convention. The convention, proposed by Russian Tzar Nicholas II, was initiated in part for “the revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified” (Casey-Maslen and Haines 2021, 7). In the end the conference produced the Convention with Respect to the Laws and Customs of War on Land, and covered a myriad of topics related to combat and occupation, including protections for

buildings and monuments of historic, artistic, scientific, and religious value (International Humanitarian Law Databases 2024).

The second Hague Convention occurred in 1907 and heavily resembled the 1899 convention. This convention, titled the Laws and Customs of War on Land, reiterated provisions from the 1899 version that bore resemblance to the scrapped section of the “Declaration of Brussels.” Article 56 of The Laws and Customs of War on Land states that,

“The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.”

Article 56 demonstrates an increased desire for cultural property protections but does not elaborate on how that should be done or what the stated legal proceedings would look like.

Similarly, the 1930s saw increased international law regarding cultural protection during wartime. In 1933, the International Conference of American States approved the Treaty on the Protection of Artistic and Scientific Institutions and Monuments, also known as the Roerich Pact. In the Roerich Pact, inhabitants of an area in conflict were instructed to indicate cultural property with a “distinctive flag (red circle with a triple red sphere in the circle on a white background) in accordance with the model attached to this Treaty” for combatants to know to avoid them (*The Roerich Pact and Banner of Peace* 1947, 34). A similar declaration called the International Convention for the Protection of Monuments and Works of Art in Time of War was drafted in 1939 by Belgium, Greece, the Netherlands, Spain, and the United States under the purview of the League of Nations. Still, this declaration, along with the Roerich Pact, was scrapped because of World War II (Merryman 1986, 835).

World War II heavily impacted cultural property policy. As part of the Holocaust and general territory occupation, the Nazis destroyed and stole many objects of cultural significance. The breadth and nature of these crimes called for policies that made such acts illegal. One of the most important pieces of international law concerning cultural property came about at the United Nations Educational, Scientific, and Cultural Organization's 1954 Convention, in which 25 nations adopted the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, commonly known as the 1954 Hague Convention. Today, 112 state parties have signed the document. The 1954 Hague Convention also further develops enforcement theories by stating there is an obligation to "prohibit, prevent, and if necessary, put a stop to any form of theft, pillage, or misappropriation of, and any acts of vandalism directed against, cultural property." This particular clause was influenced by Nazi activities during World War II but received little commentary until the looting of the Iraq Museum in 2003 (Gerstenblith 2020, 20).

Moreover, the set of laws in the 1954 Hague Convention was heavily influenced by the desire to prevent an atrocity akin to the then-recent Nazi Einsatzstab led in part by Alfred Rosenberg. At the behest of the Nazi agenda, Rosenberg organized ruthless looting within German-occupied countries with an emphasis on Jewish people's property. He was tried and hanged at the Nuremberg Trials for several crimes against humanity, including property offenses.

The first article of the 1954 Hague Convention defined "cultural property" as "movable or immovable property of great importance to the cultural heritage of every people..." and "buildings whose main and effective purpose is to preserve or exhibit the movable cultural property..." The 1954 Hague Convention is rooted in the idea that nations collectively need to protect world heritage during conflict regardless of their country of origin. This line of thought is rooted in what would later be known as "cultural property internationalism."

Despite not having a name, cultural property internationalism has existed at least as far back as ancient Athens when the historian Polybius expressed displeasure towards plundering from overcome countries in favor of “noble sentiments” for artwork of beauty and importance (Merryman 2005, 13). Even Herodotus expressed the importance of other cultures and their work in *A History*, “Nethertheless, only a madman is likely to turn the customs of others into objects of ridicule” (Herodotus 2013, 37). This idea is also expressed by *Law of Nations* author Emer de Vattel, who said regardless of why a country is “ravaged,” it is dishonorable to human society to destroy certain buildings, temples, tombs, and “...all works of remarkable beauty” (Hall 2020, 139). Vattel’s assertion that preserving such things because of humanity is similar to the argument made against Napoleon Bonaparte’s government when many pieces of Italian art were plundered as supposed compensation for the French soldiers who had been killed in conflict with Italy. French archeologist Quatremere de Quincy wrote in a letter that such objects do not belong to just one nation, France, in this instance, because such items represent human intellectual progress (Merryman 2005, 14-16).

The 1954 Hague Convention, although an essential part of cultural property law, is by no means the final document of its kind. Throughout the 1950s and 1960s, more nations gained independence, affecting the international balance of power. Many newly independent nations had been harshly colonized, and cultural looting was a part of that. As a result, museums around the world, particularly in Europe, contain artifacts of questionable provenance. This is especially true for colonizing powers such as Great Britain and France, whose global expansions were characterized by destruction and theft that led museums like the British Museum and the Louvre to acquire extensive collections from colonized locations. The 1954 Hague Convention is not

comprehensively equipped to settle repatriation or theft questions that do not result in outright damage. In 1970, many nations met via UNESCO to fill this legal precedent gap.

Returning artifacts with a questionable ownership history was a topic of interest, as were the proper methods of preventing such situations. Thus, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property was ratified. The 1970 UNESCO Convention is not retroactive but requires that nations track the provenance of cultural property they acquire since its inception and defines “cultural property” as “property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science” and belonging to one of fifteen given categories or legally classified as “cultural property” by a given nation (UNESCO 1970). This definition echoes Lieber and the earlier iterations of international cultural property law, although the term itself had not been used much before. The Russian Federation and Ukraine ratified the document in 1988, meaning they are bound by international law to uphold the provisions. Regarding the current war in Ukraine, this means that if Russian forces are found to be looting cultural property from Ukraine, then Russia is breaking an international law it willingly agreed to honor.

53 years after the United Nations’ founding, the General Assembly returned once again to the idea of an international court and at the General Assembly’s fifty-second session, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court was planned. In July 1998 the Rome Statute was signed into law. The statute was heavily inspired by the sentiments of the 1907 Hague Convention, Nuremberg Charter, and the early United Nations Convention on the Prevention and Punishment of the Crime of Genocide, which advocated for the “...possibility of establishing an international judicial organ for the trial

of persons charged with genocide.” (United Nations 1999). The Rome Statute is comprehensive and has jurisdiction over four categories of international crimes outlined in second part of the document: genocide, crimes against humanity, war crimes, and crimes of aggression (UN General Assembly 1998). Article 8 pertains to war crimes, with sections B and E containing miscellaneous provisions regarding armed conflict including and forbids targeting locations of, “...religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;” (UN General Assembly 1998). This emphasis, particularly in relation to religious, educational, artistic, and scientific purpose, is a generalized version of Hague 1954’s cultural property definition and bears a resemblance to the Lieber Code and subsequent laws.

The Rome Statute established the International Criminal Court (ICC), which opens investigations into crimes when a member state recommends a situation within itself, the UN Security Council recommends the situation, or the court prosecutor launches their own investigation (Klobucista and Ferragamo 2023). 123 countries have signed the Rome Statute, but over 40 have not. Russia initially signed the Rome Statute in 2000 without ratifying it, meaning Russia was technically outside of ICC jurisdiction. Russia fully withdrew from the statute in November 2016 because the ICC published a report about the Russian annexation of Crimea in which it described the event as an “occupation” (Walker and Bowcott 2016). The withdrawal signaled an effort on Russia’s part to avoid institutions of international justice. Russia’s withdrawal also means that the nation is not bound by the Rome Statute and has made no promise to uphold the ICC’s jurisdiction. Ukraine has never signed the Rome Statute formally, but has accepted the ICC’s jurisdiction and investigation over crimes in its territory twice before-- once in 2014 regarding Crimea and again in 2022 regarding the current war.

Prevailing Theories On Cultural Property

In 1986, John Henry Merryman wrote about the two main ways people view cultural property: cultural property nationalism and cultural property internationalism. Cultural property nationalism views culture as a vital aspect of a nation's unique identity and believes that culture should be protected for that nation's shared history and remain within that state's borders (Merryman 1986, 832). A key example in the legal sphere is the 1970 UNESCO Convention, mainly because of the special attention it pays to provenance, preventing objects from crossing international borders during conflict, and cultural repatriation for illicitly moved cultural property. In the wider theoretical context of cultural property, the 1954 Hague Convention is a paramount example of cultural internationalism-- the idea that the international community has a shared responsibility to protect cultural property because cultural property is a part of the shared history of humankind.

In broad terms, cultural property nationalism and cultural property internationalism are two of the leading schools of thought regarding cultural property protection and repatriation; however, they can also be viewed as a binary understanding of cultural property. Since the 1980s, other scholars have observed that Merryman's perspective has created two distinct parties in the realm of cultural objects. This forked approach can easily dilute complex themes of power and ownership into more straightforward talking points that do not fully retain their original meaning (Bauer 2007, 694). In their common understandings, cultural property nationalism and internationalism are seen as a part of the ideology of nations and institutions and thus framed as good or bad for the state of cultural property overall.

In 2005, legal academic Lyndel V. Prott questioned Merryman's definition of cultural property because his list does not encompass the property of groups, such as Indigenous and

tribal communities, that do not desire for their cultural property to be considered commodities for sale. In this same vein, Prott points to how cultural property internationalism is villainized as being akin to cultural imperialism because it seems based on the ideology and gain of wealthy nations and their museums (Prott 2005, 228). Moreover, as archeologist Alexander A. Bauer observes, it is overwhelmingly apparent that neither of the two polarized schools of thought are having their desires met by the systems they have implemented because the two main ways of thinking about cultural property fail to account for complex dynamics of power (Bauer 2007, 695). Until people understand how systems of power shape how cultural property is moved, presented, and perceived they cannot fully implement effective means of protection that benefit relevant parties.

How Power Deforms Memory

In tandem with legal arguments, the ways in which dynamics of power shape memory apply to the study of cultural heritage and identity creation. Palestinian-American scholar Edward Said stated that memory is “...both for historians as well as ordinary citizens and institutions very much something to be used, misused, and exploited, rather than something that sits inertly there for each person to possess and contain” (Said 2000, 179) because one group writing over the history of another enables the former to challenge collective memory to the detriment of the latter. Said applied these observations to Zionist revision and outright erasure of Palestinian history to justify Israeli settlement in Palestine. In particular, he cited that as Zionism gathered momentum, so did historical narratives that glorified ancient Israel and biblical archeology. As Israeli settlement began, those narratives were galvanized in such a way that the history of ancient and modern Palestine was pushed to the outskirts of global consciousness (Said 2000, 186). This exercise of power by Israel, supported by several other countries, has

damaged Palestinian culture and memory to a degree that is demoralizing for the Palestinian people. This concept extends beyond Said's application to Palestine to other locations worldwide and throughout history. In Ukraine, the rhetoric of "Ukronazism" is used by Russia to justify its actions, like destroying objects and places of Ukrainian culture. "Ukronazism" is grouped by the Russian State as a facet of Nazism with an added emphasis on "enmity among nations, racism, neo-fascism, Russophobia and other anti-human phobias" (*The State Duma: The Federal Assembly of the Russian Federation* 2023). In reality, Russian state media uses "Ukronazism" and "Nazi" to discredit Ukrainian independence when Ukraine's actions do not actually resemble Nazi doctrine or action. Instead of Russia recognizing Ukraine as a nation with its individual history and identity, Russia delegitimizes Ukraine's right to exist. Instead, it glorifies Ukraine in its former iteration as part of the Soviet Union in a manner comparable to Israel's propaganda that endears Zionist narratives over Palestine's right to exist.

Research Design and Methodology

My thesis explores cultural property dynamics and identity construction using three case studies. To develop these case studies, I conducted qualitative research, pulling from various sources to capture the scope of the studies. The case studies are summarized and examined through historical analysis and theories of cultural property law, as well as dynamics of power and memory. Moreover, these studies provide a basis for a better understanding of the historical precedent of Ukraine's cultural property theft and destruction in the present day. These studies of the past not only provide context but also how the laws and protections relevant to Ukraine interact and how they came to be through centuries of legal theory and historic events. By examining the past events in the given case studies and their ramifications, one can better

comprehend the potential outcomes for Ukraine's cultural property and those perpetrating its theft and destruction.

Chapter 3: Nazi-looting Case Study of Attack and Erasure

Perhaps the most well-known case of large-scale cultural heritage theft is that of the Nazi Einsatzstab during World War II. From the beginning of the Nazis' rise to power, the regime stole artwork to erase the culture of occupied territories and present desirable artwork within the larger context of German greatness, specifically in their attack on Jewish people, art and culture, thus the more extensive Holocaust on the Jewish diaspora. Like Napoleon, the Nazis set out to plunder artwork for their museum and private collections but the Nazi Einsatzstab benefited from technological advancements that were not available during the Napoleonic Wars. The 19th-century French utilized carts, while the Germans had access to 20th-century aircraft and trains. Many of the pieces stolen by Napoleonic troops were later stolen again on account of the Nazi Einsatzstab. Like Napoleon, Hitler sought to acquire pieces of culture, namely art, for the sake of cultural and political supremacy (Sandholtz 2007, 127). For Hitler, this was advantageous because the erasure of Jewish art and culture exacerbated the erasure of the Jewish people.

The Third Reich's Utilization of Degenerate and Idealized Artwork

The 1930s in Germany were characterized in part by a steady attack on cultural property that did not align with Nazi ideals. Within weeks of Hitler's rise to Chancellor, the Nazis began to destroy or sell works of modern art in their possession (Freeman 2021, 87). The goal was to cultivate "folk-related" and "race-conscious" art that glamorized the Nazi government and replaced Jewish cultural contributions to Germany, which the Nazis deemed to be "Jewish decadence" (Freeman 2021, 87). Art was used subversively by the Nazi party in the July 1937 Exhibition of Degenerate Art, which displayed artwork confiscated from German museums

alongside derisive labels and attracted over two million people over its four-month showing in Munich (Sandholtz 2007, 129). The exhibition reiterated the claim that pieces of Jewish and Communist influence “endanger public security and order” (U.S Holocaust Memorial Museum 2020). Furthermore, Nazis specifically sought out Medieval, Renaissance, Baroque, and German realist artists that aligned with the Nazi ideal to display positively (Rothfeld 2002). This ideology was turned into government policy as time went on, and the Nazis began stealing masterpieces from across Europe to achieve cultural supremacy. By 1938, Hitler had plans to establish a grand art museum called the Führermuseum in Linz, Austria, to exhibit stolen European art masterpieces (Sandholtz 2007, 129).

When plundering occupied territories, Hitler sought to utterly eradicate both national and cultural identities that were contradictory to Nazism. After invading Poland in September 1939, the Nazis enforced policies for systematically stealing cultural objects, explicitly ordering the confiscation of “objects of artistic cultural and historic value.” Under that order, the Gestapo and German troops confiscated the art collections of churches, libraries, museums, palaces, and wealthy families (Sandholtz 2007, 130-131). The goal of this seizure was to gather the works that Nazis deemed most idealistic and arrange them in the Führermuseum within a proud German narrative rather than a Polish one. The man overseeing the Polish theft, art historian Kajetan Mühlmann, later stated in an affidavit for the Nuremberg Tribunal that “...the art treasures mentioned, were actually confiscated, and it is clear to me, that they would not have remained in Poland in case of a German victory, but that they would have been used to complement German artistic property” (Sandholtz 2007, 132).

Rosenberg's Einsatzstab

The Nazi initiative to plunder cultural property was multifaceted and essential enough that several officials were tasked with it. Among these were Gestapo and Schutzstaffel (SS) head Heinrich Himmler and Führermuseum project director Hans Posse; even Foreign Minister Joachim von Ribbentrop was tasked by Hitler to send troops into occupied territories to steal art (Sandholtz 2007, 131-132). One of the most prolific Nazis involved directly with art theft was prolific antisemite Alfred Rosenberg. The Einsatzstab Reichsleiter Rosenberg (ERR) was a force founded in July 1940 under Rosenberg's command whose sole purpose was to plunder and steal cultural property in Nazi territories. Before leading the ERR, Rosenberg had not been notably effective in any of the political offices he had held but had consistently expressed a determination to eradicate Jewish people (McKale 2012, 170). Under Rosenberg's direction, many of the most desirable works from Estonia, Latvia, Lithuania, Russia, and other occupied nations were shipped to Germany monthly. They often consisted of forty to fifty freight train cars of stolen art (Sandholtz 2007, 132). Nazis did not only steal cultural property but destroyed it as well, and Russia was hit especially hard. After the Nazis stole countless works of art from many notable palaces near St. Petersburg, the tide of the conflict turned, and they were made to retreat by the Russians. While on the retreat in Russia, the German troops destroyed hundreds of culturally significant sites such as libraries, palaces, churches, and 427 museums (Sandholtz 2007, 132-133). Many of these sites were never fully rebuilt.

France also endured a great deal of Nazi looting while under occupation despite preventative measures. Before France fell to Germany the Louvre staff was able to covertly evacuate the entirety of the museum's collection and move it between several chateaus during the occupation to prevent Hitler's forces from stealing the collection (Poirier 2014). This was a

source of incredible frustration for the Nazis, for whom France represented a vast repository of grand European artistic accomplishments fit for the conceived Führermuseum. Although the Louvre was empty, the Germans quickly began using it as storage for stolen art from other French organizations and private citizens. The primary leaders of the French plunder were Hitler and Luftwaffe commander Hermann Goering, the latter of which had accumulated an extensive personal collection of stolen “degenerate art” before 1939 (Sandholtz 2007, 134). For two full days, Goering oversaw an inspection of the looted art in the Louvre. In November 1940, Goering categorized each of the stolen French artworks into one of five groups: use in Hitler’s personal collection, use in the Reich Marshal’s collection, use in higher institutes of learning under Rosenberg’s jurisdiction, use in German museums, and those possibly for use in German-French art trade (Sandholtz 2007, 134). Goering’s methodical approach to theft is indicative of how the Nazi regime sought to utilize these artworks to shape perceptions of power and memory. Stolen pieces that would have been displayed in the conceived Führermuseum would have come to represent not only the dominance of the Third Reich but the erasure of French influence over the artwork.

By 1941, Rosenberg had almost three-fourths of the artwork looted from France, a great deal of which had come from Jewish families (McKale 2012, 171). Rosenberg later stated that “...by using all possible ways and means, we discovered and seized all Jewish art collections which were hidden either in Jewish homes in Paris, in castles in the provinces or in warehouses and other storage places” (Sandholtz 2007, 135). The looting was especially systematic and purposeful under Rosenberg because his position had the added caveat of eventually incorporating objects into German institutes of higher education and libraries with the added

impetus of eventually placing the stolen objects in a way that would galvanize German excellence or serve as an example of “degenerate art.”

International Concerns and Actions

Many acts of plunder were committed in the early months of World War II and invoked great concern internationally. In 1943, eighteen nations, including the United States, United Kingdom, Poland, France, and China, signed the Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control. This brief document did not mention Germany by name. Instead, it referred to the nation at war with France and urged countries to cease acts of “open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected” (“Document 456” 1943).

Furthermore, the British government established The Committee on the Preservation and Restitution of Works of Art, Archives, and other Material in Enemy Hands to track looted pieces of cultural property with the eventual goal of returning such items. By that time, the art theft situation was especially dire for France, where Hitler had stolen many pieces of art and other property and was storing them in the Louvre (Sandholtz 2007, 133). Rosenberg sent a report to Hitler in April 1943 stating that over the previous three years, the ERR’s collection of stolen works from the French consisted of 9,455 individual items (Sandholtz 2007, 135). Although private organizations in the United States voiced concern for stolen property and supported American intervention, the US Army stated there was “no advantage to the idea of a national commission for the protection of cultural items.” (Freeman 2021, 88). However, this viewpoint changed when President Roosevelt created the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas in August 1943. The Fine Arts and Archives Program came soon after as did the Monuments Men.

The Monuments Men consisted of no more than 350 men and women with previous experience in cultural property and artifacts such as curators, art historians, educators, artists, and museum directors. The initial goal of the Monuments Men was to provide temporary protections and fixes to damaged sites of public cultural importance in Europe like cathedrals and monuments. Still, it became increasingly apparent how Nazis forces were systematically stealing artwork; the organization's mission changed to encompass identifying and tracking stolen artwork with the hopes of eventual repatriation. After the war ended, the Monuments Men were able to help repatriate over 5 million stolen objects ("Monuments Men Act" 2014). This focus is especially relevant because even though the laws later used by the Allied Powers at Nuremberg did not explicitly discuss cultural property or cultural heritage, the concerns of anthropological institutions and actions of the Monuments Men demonstrate there was a public, institutional, and government interest in protecting cultural property.

The Nuremberg Trials

The devastating atrocities of World War II led the Allied Powers to establish an international criminal tribunal unlike any seen before. Governed by the Nuremberg Charter, the International Military Tribunal at Nuremberg saw the prosecution of multiple high-level Axis government officers for their war crimes. The recent war brought to light a new extreme of regimes utilizing cultural property seizure and destruction to oppress and persecute communities. Despite these realizations, the Nuremberg Charter did not explicitly reference cultural heritage and failed to reference the Hague Conventions of 1899 and 1907 (Carstens 2020, 118). This exclusion was not an oversight but rather a deliberate choice that reflected the priorities of those in power. In the initial meetings drafting the Nuremberg Charter, the writers considered including crimes related not just to cultural property but to destruction and seizure altogether. One of the

primary drafters, British lawyer Hersch Lauterpacht, observed that although cultural property destruction could constitute a war crime, that sort of crime was not grave enough or warrant the same moral urgency as other war crimes in the drafted charter (Carstens 2020, 120). In the end, the Nuremberg Charter did provide a vague basis to prosecute based on the list of war crimes, which included "...the plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity;" (Carstens 2020, 120; "The Charter and Judgment of the Nürnberg Tribunal"1949). Thus, cultural property destruction and theft were not implicitly a war crime according to the Nuremberg Charter because of the unique value of cultural property, but rather because general property theft provisions covered them.

With that in mind, Alfred Rosenberg was captured by Allied forces in May 1945, a little less than a month after Hitler committed suicide in the Führerbunker. Rosenberg was tried along with 22 other high-ranking members of the Nazi party, including Goering, on four counts: conspiracy, crimes against peace, war crimes, and crimes against humanity (Avalon Project. 2008b). Rosenberg was found guilty of all four and in his judgment, there are no explicit mentions of cultural property or cultural heritage. The majority of his judgment focuses on the role he played in developing and spreading the Nazi doctrine under Hitler's supervision and his actions in the attacks on Norway and the Soviet Union. However, the judgment section dedicated to his crimes against humanity addresses his role in property seizure and plunder of private and public property. His role as head of the Einsatzstab is noted, as is the fact that through that role his theft disproportionately affected Jewish people:

"...he organized and directed the " Einsatzstab Rosenberg," which plundered museums and libraries, confiscated art treasures and collections and pillaged private houses. His own reports show the extent of the confiscations. In "Action-M" (Moebel), instituted in December, 1941, at Rosenberg's suggestion, 69,619 Jewish homes were plundered in the West, 38,000 of them in Paris alone, and it took 26,984 railroad cars to transport the

confiscated furnishings to Germany. As of 14th July, 1944, more than 21,903 art objects, including famous paintings and museum pieces...” (Avalon Project, 2008a).

The approach to Rosenberg’s crimes, as Lauterpacht framed, puts greater emphasis on crimes deemed to be of greater moral urgency such as the murder of hostages and forced labor, but though with a lesser urgency, Rosenberg is also held to account for his systematic plundering. The language of the above excerpt does in some ways echo the sentiments of Article 56 of 1907’s Laws and Customs of War on Land because the judgment also has an emphasis public institutions like museums and libraries being plundered when according to Hague 1907 these places, although public, should be treated as private because of their educational value.

While on trial, Rosenberg was dismissive of many of the claims made against him. He challenged evidence found in his Berlin office and at no point expressed remorse for his actions (McKale 2012, 182). He continued to make antisemitic statements but denied the accusation that he had played a role in Jewish extermination. He blamed Jewish people for the Final Solution, stating that “The war against Jewry came about because an alien people on German soil arrogated the political and spiritual leadership of the country, and believed itself triumphant, flaunted it brazenly.”(McKale 2012, 183). Till the end, Rosenberg insisted he had nothing to do with Jewish genocide. He was hanged on October 16, 1946 and declined to give any last words.

In conclusion, understanding Nazi art theft during World War II is a cornerstone for understanding the greater circumstances of cultural property theft and destruction as well as the formation and applications of related laws. Lauterpacht and the other framers of the Nuremberg Charter may not have explicitly included provisions for cultural property theft in terms of heritage for Jewish communities but the repeated relevance of property theft for disenfranchised groups reiterates how cultural property theft shapes power and history. It is no coincidence that

Alfred Rosenberg played a significant role in both Nazi doctrine and property theft because the utilization of such cultural property for Nazi narratives like that of the proposed Führermuseum would have relied on the subjugation if not destruction of the communities the property was stolen from.

Chapter 4: Iraq Case Study of Wartime Looting

The ancient history of Iraq is part of the world's commonly told history. Mesopotamia, the birthplace of civilization between the Tigris and Euphrates rivers, was located in modern-day Iraq. The nation is prosperous in history and home to six UNESCO World Heritage Sites and many more archeological sites. The importance of Iraqi cultural sites and objects is well documented. From the viewpoints of both cultural nationalism and internationalism, there is an argument for collective responsibility to protect cultural property and sites in Iraq. Despite the importance of this cultural heritage, the United States utterly failed to prevent people in Baghdad from plundering the museum in April 2003.

The Early History of the National Museum of Iraq

The Museum was founded in 1926 at the insistence of the British government through Gertrude Bell, a British writer, traveler, and intelligence analyst in the Middle East. Throughout many trips in the early 20th century, Bell excavated at sites in Turkey and Mesopotamia and published stories about her travels throughout the Levant. She became a British envoy and Iraqi archeology quickly became her wheelhouse, from which the British benefited (Rothfield 2009, 10). Her desire to excavate and display objects found on digs created the need for such a national museum. Her influence and involvement in drawing Iraq's modern borders led to her being called the "uncrowned Queen of Iraq" (Rothfield 2009, 10).

The original museum, then called the Baghdad Archeological Museum, consisted of a single room with excavated objects displayed on tables without any formally employed technical staff (Rothfield 2009 10). The British government's interest in Iraqi artifacts goes back to before the modern state existed. In the late 19th century, when the Ottoman Empire ruled over what is now Iraq, the sultan did not recognize the intangible value of artifacts. He made little effort to

recover items unless they were made of precious metals (Rothfield 2009,12). This ambivalence made it easy for the British archeologists, through the British government, to overstep guidelines without repercussions. For instance, the British Museum trustees received permission from the Ottoman Empire to have famed archeologist Charles Fellows excavate and remove some sculptured stones. Due to the lack of Ottoman oversight, Fellows excavated an entire temple for the British Museum (Rothfield 2009, 12). Fellows and the British government were allowed to return for more excavations despite taking such a liberty but were accompanied by armed Ottoman guards from that point on.

After the Iraqi Revolt of 1920, Iraq became a client state under the League of Nations' British Mandate of Mesopotamia in December that same year. Following the mandate, there were many archeological campaigns by foreign institutions in Iraq. One of the better known campaigns occurred in 1912 and was a joint venture by the British Museum and the University of Pennsylvania Museum of Archaeology and Anthropology. The group excavated a 4,500- year old cemetery at Ur and found crowns, daggers, and earrings for their respective museums (Werr 2005, 29). In 1924, Gertrude Bell wrote a new law regarding antiquities for Iraq which, unlike most other countries' heritage laws, enabled foreign archeologists to both export and keep a weighty portion of the artifacts they excavated (Desplat 2017). By the time that Bell helped establish the National Museum of Iraq in 1926, the nation's leader was King Faisal I, who wanted to be seen as an Islamic leader of an Arab nation. Artifacts from pre-Islamic Mesopotamia did not meet that vision, so the museum was not a point of interest. As scholar Lawrence Rothfield observes,

“...whereas European museums were designed either as tools for disciplining, civilizing, and nationalizing the working classes or as display cases for the trophies of empire, Iraq's museum could serve neither of these purposes. Instead, it was conceived—and in many ways continues to function—as a depository of pre-Islamic antiquities mostly collected

by foreign excavators for the sake of foreigners.” (Rothfield 2004, 10).

Iraq’s independence in 1932 led to more interest in its ancient artifacts, but supporting the museum was far from the first priority and the emerging nation did not have the necessary breadth of time and resources. King Faisal died in 1933 and his successor did not allow Europeans to head the Department of Antiquities as they had since Bell’s death in 1926. In the following years, Rothfield’s observation seems to hold even more merit. The Iraqi government continued to operate under a continued lack of interest by the state in its pre-Islamic past is supported by the fact that there was repeated foreign assistance to the museum over the latter part of the 20th century. In the 1960s, the German government helped build several buildings and the Italian government did the same in 1983 (The Iraq Museum 2020). In the following years, Iraqi nationalism grew along with the nation’s desire to retain its artifacts. Looting at unguarded archaeological sites had been an issue but became significantly more common following a 1958 coup (Rothfield 2009, 11). In 1968, the Ba’ath Party rose to power with backing from the United States and implemented a police state that gave harsh punishments to anyone found looting from an archeological site (Ismael and Ismael 2005, 609-610; Rothfield 2009, 12). Iraq’s rulership was characterized by coups and general consistency until Saddam Hussein, a member of the Ba’ath Party, took power in 1979 (Werr 2005, 28). His regime signaled a change in the state of affairs for all of Iraq, including its cultural property.

Cultural Property Under Saddam Hussein’s Vision For Iraq

Saddam Hussein was not pleased by the state of Iraq when the Ba’ath Party came to power in 1968. He observed conditions of food scarcity, poverty, lack of education and high infant mortality. Many years later in 2004 when he was interrogated at a U.S military detention center he said he would likely be viewed favorably by history for his treatment of Iraqis,

specifically in the fields of healthcare and education (Blaydes 2018, 61). When Saddam Hussein assumed the presidency in 1979, he brought with him a new vision for Iraq. This vision consisted of a powerful and wealthy nation built on the shared ethnocentric past of Iraq. In the 1970s onward the Ba'athist state galvanized Iraq's pre-Ottoman ancient past to put forth a narrative of national unity that downplayed the plethora of diverse Iraqi identities in favor of the one unified story. Hussein was able to utilize the narrative of ancient Iraq to unite Iraqis under a shared history for the purpose of nation-building; as a result, antiquity and archeological research flourished in the 1970s and 1980s with strong state support (Kathem, Robson, and Tahan 2022, 11-12).

Hussein purposefully sought out cultural property and antiquities to alter how he was perceived and strengthen his power and legacy. At multiple points, Hussein sought to immortalize himself akin to the emperors of Babylon through archeology and the exploitation of cultural heritage. A particularly infamous example of this is when Hussein ordered one of the three original palaces of Babylon to be rebuilt despite the fact that little is known about the appearance of the palaces (MacFarquhar 2003). Hussein envisioned himself as being similar to Babylon's best known king Nebuchadnezzar and even had the cement bricks for his false restoration of Babylon stamped with his own name akin to how Nebuchadnezzar's name was stamped on the ancient bricks in 605 B.C. (Ditmars 2022; MacFarquhar 2003). Although Hussein spent millions on reconstructing Babylon, the structures standing there today are only an assumption of what may have been and are riddled with inaccuracies. Iraqi author and professor Kanan Makiya observed that,

“Saddam wanted every Iraqi to know that he rebuilt Babylon. The point is that it's not just an archaeological reconstruction of the city of Babylon for the sake of science and history and the past. It's an idealization of that history for the purposes of the cementing of the legitimacy of the regime's presence.” (Magid 2019).

In this way, the attempted reconstruction represented not only the historic cultural value of the site, but harks back to the vision of a unified Iraqi heritage under Hussein's vision for the nation.

Another infamous example of Hussein attributing cultural property to himself is when he had a copy of the Qur'an made using his own blood as ink and displayed it in a mosque. The act was deemed sacrilegious at the time and continues to be considered an act of haram to the degree that anyone wishing to view the document must be considered by a specified council (Chulov 2010). By creating such a document, Hussein appropriated a text with vast religious and cultural value for his own powerful image.

Looting continued to be a concern throughout Hussein's presidency but, due to his vested interest in Iraqi cultural property, he took measures to prevent it as much as possible through deterrence of terror. One Iraqi museum official later described it as, "In Saddam Hussein's time, if they caught you looting, they did this," before making a slicing motion across his throat with his hand (Rothfield 2008, 6). This protection was damaged amidst the chaos of the Persian Gulf War in 1991, as the nation had fewer armed soldiers to guard the sites and the Iraqi National Police were no longer able to investigate disappearances because of lacking funds and corruption (Rothfield 2008, 6). The looters were not organized syndicates but rather individuals pushed to steal out of necessity. It is estimated that upwards of 4,000 objects were looted from Iraq during the Gulf War (Rothfield 2009, 16). During that time, the American military took some measures to protect sites. Bill Clinton's administration established a Peacekeeping Core group as part of a post-conflict stability initiative to stand by and protect sites from looting but the group was not large enough to protect all of the targeted sites. Unfortunately the group, along with several other post conflict stability initiatives, was scrapped by George W. Bush's first national security directive (Rothfield 2008, 6).

Looting Amidst Chaos

When the Bush administration invaded Baghdad and toppled a statue of Saddam Hussein, they sent a message of victory that would later be compounded by Bush's infamous "Mission Accomplished" statement on May 1, 2003. The destruction of the statue was meant to be a lasting act of iconoclasm against Hussein's regime (Rothfield 2009, 3-4). Yet, perhaps the most impactful and destructive act of iconoclasm was the sacking of the National Museum of Iraq. The destruction and looting within the National Museum of Iraq in April 2003 were not the result of rebellion or cultural indifferences; the event was motivated by profit for desperate people, which led them to steal and resell looted objects.

By 2003, the objects accumulated in the Iraq Museum represented not only Iraqi heritage and culture but also the broader history of the Middle Eastern region and the history of the world as a whole. Some of the more notable objects in the collection include a terracotta lion from Shaduppum dated to 1800 BCE and the Golden Lyre of Ur dated to 2500 BCE. The Golden Lyre's existence today in the National Museum of Iraq is particularly impressive because during the 2003 looting the gold and silver pieces on the lyre were stripped off and the remains were found in the Museum's parking lot (Shukir 2019). In the months after the looting of the museum, one archeologist remarked even remarked that,

“[I]f one were to 'simultaneously explode the National Gallery, the Library of Congress, the cultural institutions of Philadelphia, Boston, and New York, then add the Louvre and the British Museum, that might describe' the magnitude of loss to world culture and ancient scholarship that the looting wrought.” (Paroff 2004, 2021).

While American soldiers held Baghdad, no attempts were made to secure the museum filled with artifacts dating back to ancient Mesopotamia. Several members of the cultural heritage and archeological community voiced their concerns to the Pentagon before the invasion (Hanson 2008, 11). One letter in particular from the Archaeological Institute of America (AIA)

and the American Association for Research in Baghdad (AARB) raised specific concerns to military officials, explicitly citing the regulations of the 1954 Hague Convention, which requires nations to “prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property” (Rothfield 2009, 84). Despite several similar requests, no proper contingency plan for Iraq’s sites or museums was enacted. In a later interview, the president of the American Council for Cultural Policy (ACCP) remarked about the event, “Nobody thought of quote *culture* as being an independent stand-alone issue that needed to be looked into” (Rothfield 2008, 7). Similar appeals were also made within the international community. The International Near East scholars sent a petition to the United Nations voicing concern for the archaeological sites and museums in Iraq, explicitly suggesting armed personnel secure the areas to prevent theft and destruction (Rutgers and Vrdoljak 61). No such provisions were made.

In an interview in Kuwait five days before the Iraqi Museum in Baghdad was looted, cultural anthropologist and social affairs reservist Major Christopher Varhola spoke about potential steps to protect Iraq’s cultural heritage. He also touched on his role at the time and the years prior in keeping heritage sites off target lists, specifically citing collaboration with archeologists and anthropologists at several American universities to create lists of locations whose cultural importance outweighed military purpose, notably saying on the matter of sites, “I cannot speak for the ground commanders, but I can assure you that, because of civil affairs soldiers, the ground commanders are aware of the importance of preserving sites and of not letting short-term military necessity override that importance.” (Office of International Information Programs 2003). Looting was discussed in the same interview since thousands of sites in Iraq alone may be considered important cultural heritage sites. Varhola also said,

“Another concern is looting -- especially in the absence of law and order and the economic uncertainty that is inherent to any military operation of this magnitude. All around Iraq, there are several museums, particularly the National Museum of Baghdad, that hold priceless materials. The U.S. Military is eager to coordinate with any organization dedicated to the task of preservation, which transcends military and operational necessity.” (Office of International Information Programs 2003).

The interview was given on April 5, 2003--five days before the National Museum of Iraq in Baghdad was looted. Varhola’s concerns in preparation for the invasion of Baghdad highlight how unprepared the American Civil Affairs forces were to navigate issues of cultural heritage protection with only a short window of time to prepare. The Civil Affairs forces were not brought in to help with the pre-war planning until January 2003-- barely three months before the invasion (Rothfield 2008, 8). This extremely narrow period did not allow Civil Affairs to prepare and inform war planners adequately, nor did it allow those war planners to take much of the information given to them into account. Based on the tone of the interview alone, it seems that Varhola may not have even known that Americans were to overtake Baghdad in five days.

Regarding the National Museum of Iraq, this meant there was not enough time to formulate a plan to protect it from looters. Although it is difficult to ascertain the outcomes that could have been, leaving Civil Affairs-- the military branch tasked with, among other things, maintaining stability and protecting cultural property--out of planning until three months before the invasion was a crucial mistake. There are many reasons why the Bush administration made this error. Among them was the administration’s desire for its action in Iraq to be quick and decisive, so post-war planning was an afterthought.

Primarily due to gaps in communication, the scene on April 10 was chaotic. Before the thousands of soldiers even reached Baghdad, looting at archeological sites by Iraqis had begun on the outskirts of the capital. Early that same morning, archeologist and Mesopotamia scholar McGuire Gibson sent a particularly urgent message to Captain John Gurney, one of the military’s

targeters. In the message, he reiterated the importance of securing the National Museum from civilian looters and letting Gurney know civilian looting was already happening at seven specific sites (Rothfield 2009, 85). The recently involved Civil Affairs officers may have been eager to take measures to protect cultural property, but without the proper time and policies to put those measures in place, the sentiments did little to help the situation.

The sacking of the National Museum of Iraq happened because the United States failed to take the potential of civilian looters into account despite multiple instances in which they were warned it was essentially inevitable. Waiting to involve Civil Affairs until three months before simply did not provide CA with enough time to get proper contingency plans in place. On April 10, the first looters broke into the museum and began smashing display cases and taking their contents. The only group present with the power to stop the theft was the United States Military, and it failed to do so because culture was not prioritized properly (Hanson 2008, 33).

In the outrage that followed the Iraq Museum's looting, one of the prevailing questions was how international law accounted for such an atrocity. Many scholars pointed out the violations of the 1954 Hague Convention, which argues for general protection to both immovable and movable cultural property so long as the nation whose property is in danger has made an effort to safeguard the cultural property from the "foreseeable effects of armed conflict" (Paroff 2004, 2032). In the case of the Iraq Museum, the museum employees had taken measures to protect objects from conflict and looting by placing protective barriers around sculptures and relocating 8,366 of the object in an attempt to prepare for such an emergency but the dire situation required staff to evacuate on April 8, two days before the looting began (Prasad 2018).

The looting of the Iraq Museum of Iraq was the result of negligence from Iraq and the United States to prioritize protecting the museum. Despite the known history of looting in the

area, both governments did not do enough to prevent such an event. This is especially true for the Bush administration, whose failure to involve and equip civil affairs officers or other peacekeeping initiatives in war planning led to there being no concrete plan in place.

Legal Gaps and Updates in Procedure

The looting of the Iraq Museum made it abundantly clear that the existing provisions meant to prevent such an event were unsatisfactory. In May 2003, the United Nations Security Council adopted Resolution 1483, the first UNSC resolution to explicitly address the status of cultural objects. The resolution stated that all members states should take the necessary steps to, “facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archeological, historical, rare scientific, and religious importance illegally removed from the Iraq National Museum...” and explicitly called upon UNESCO to help nations do so (Gerstenblith 2020, 37).

Similarly, there are the updated provisions in the war manual of the United States Military, which now covers formal procedures for the protection of cultural property amidst hostilities, occupation, non-international armed conflict, and a section on the 1954 Hague Convention (United States. Department of Defense. Office of General Counsel 2015, vxiii). Cultural property during hostilities is to be “safeguarded and respected” along with the immediate surrounding areas (United States. Department of Defense. Office of General Counsel 2015, 301). Moreover, when protecting cultural property amidst occupation the manual cites the Hague 1954 Convention,

“Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.” (United States. Department of Defense. Office of General Counsel 2015, 828).

The manual also uses the same definitions for cultural property as the Hague 1954 Convention but cites the Roerich Pact as well, both of which list museums as sites of cultural property worthy of protection.

The looting of the National Museum of Iraq is one of the most egregious examples of wartime looting of cultural property in history. The exact number of looted objects is still unknown and although many objects have been recovered, a notable percentage of them were damaged in the chaos of April 2003. The resulting loss of cultural heritage and worldwide concern emphasizes that nations cannot forget to consider culture as an issue worthy of great attention. The changes made since then are notable, but do not change the fact that the looting disaster may have been avoided if those provisions had been written before and the relevant authorities in civil affairs had been informed of the invasion plans earlier. This case study is relevant to modern research the same way that looting thousands of years ago is relevant because it consistently accompanies war and desperation.

Chapter 5: Timbuktu Case Study of Destruction and Modern Legal Outcomes

The city of Timbuktu in Mali is well known throughout the world for its historical and cultural importance. In 1988, it was deemed a UNESCO World Heritage site due partly to its “outstanding universal value as an African intellectual and spiritual capital in the 15th and 16th centuries” (Hosagrahar 2021). The city is a testament to human achievement and home to many notable mausoleums and mosques, particularly the mosques Djingareyber, Sankore, and Sidi Yahia.

Heritage Site Destruction in Timbuktu

In 2012, several buildings of historical and religious importance were systematically targeted and destroyed as part of an armed conflict perpetrated by Al-Qaeda-linked group Ansar Dine. At the time, Ansar Dine controlled most of Mali following a military coup and sought to impose a strict interpretation of Sharia law (Mark 2012; Stanford University 2018). Part of that interpretation of Sharia law entailed destroying monuments that did not align with Ansar Dine’s Islamic doctrine. A representative for Ansar Dine stated in 2012 that the destruction was justified because the monuments in question, mosques, were idolatrous and “un-Islamic” (Mark 2012). One onlooker and Timbuktu resident recalled the day the Sidi Yahya mosque was attacked and its door destroyed, “We believe it is a profanity to open this door; it can only be opened on the day the world will end. The militants broke it down” (Mark 2012). The city sector of Timbuktu that forms the UNESCO heritage site of Timbuktu includes 16 mosques, and Ansar Dine militants destroyed 14. The site was added to the UNESCO list of World Heritage in Danger for the first time since 2005 because of civil unrest, deliberate destruction of cultural heritage, and war (SOC 2012).

Following a preliminary investigation, an arrest warrant was issued by the International Criminal Court on September 18, 2015, for Ahmad Al Faqi Al Mahdi based on “war crimes of intentionally directing attacks against historic monuments and buildings dedicated to religion, including nine mausoleums and one mosque in Timbuktu, Mali, committed between about 30 June 2012 and 10 July 2012” (International Criminal Court 2022). Al Mahdi was deemed to be the critical perpetrator because he worked alongside the leaders of Ansar Dine and the Islamic Maghreb, another militant group, to coordinate attacks on specific buildings in Timbuktu. Al Mahdi was also in charge of the *Hisbah*, a body that sought to exert Ansar Dine’s moral code upon the people of Mali and brutally punish vice (International Criminal Court 2022).

International Criminal Court Trial

At the time the ICC warrant for Al Mahdi was issued, he was in Nigerien custody due to charges of arms trafficking with the intent of committing acts of terror that are unrelated to his actions in Timbuktu. After the ICC warrant was issued, Niger surrendered him to the ICC (Open Society Justice Initiative 2016). In August 2016, Al Mahdi pleaded guilty. During the trial, he stated that he had directed attacks that destroyed several buildings of historic and religious importance, such as mausoleums and the door of the Sidi Yahya Mosque. He was found guilty in September 2016 of destroying buildings dedicated to religion and historical monuments, a war crime under Article 8(2)(e)(iv) of the Rome Statute (Bagott 2021, 38). Article 8 explicitly prohibits,

“Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.”

The ICC’s application of Article 8 is noteworthy in Al Mahdi’s case because the court found that the attacks in Timbuktu were directed outside of the conflict between militant groups

Ansar Dine and the Malian government. Al Mahdi stated his motivation for destroying the buildings in question was because they did not align with his interpretation of Islam in his capacity as head of *Hisbah* and enforcer of Sharia law (Bagott 2021, 38,40). Moreover, after Al Madhi observed inhabitants of Timbuktu visiting the mosques and mausoleums within cemeteries, *Hisbah* set the objective to “stop such practices and, as the case may be, to prohibit them from pursuing them” (International Criminal Court 2017a,18). The Timbuktu attacks were not made as part of the conflict between Ansar Dine and Mali, as Article 8 describes; instead, the attacks were part of Ansar Dine’s religious fundamentalism and are a matter of religious iconoclast. In this way, the ICC deemed Al Madhi guilty of the crime, not as a matter of law, but as a matter of fact (Bagott 2021, 38, 40). This ruling is indicative that although the Rome Statute’s provisions about cultural property are significantly more explicit than those at Nuremberg there are still gaps that require further interpretation if not elaboration.

There is also the matter of Article 25(3)(a) of the Rome Statute in Al Madhi’s guilt. The court found that

“He had overall responsibility for the execution phase of the attack, determining the sequence in which the buildings would be destroyed, making the necessary logistical arrangements and justifying the attack to the broader world through media interviews. Mr Al Mahdi personally oversaw the attack itself – he was present at all of the attack sites and directly participated in the destruction of five of the protected buildings.” (International Criminal Court 2017b, 29).

This demonstrates the extent to which one must be involved with site destruction in order to be held responsible for those acts. Al Mahdi is the primary person being held responsible for the destruction because he organized and oversaw the attacks. The people who physically fired the ammunition may also be held responsible for other crimes of violence, but Al Mahdi’s circumstance as someone who systematically sought to destroy the sites is the person responsible according to the Rome Statute.

The ICC's ruling on Al Mahdi was also recognized by the United Nations Security Council in 2017 via Resolution 2347. The main purpose of Resolution 2347 was not focused on Al Mahdi but rather combatting the ways in which ISIL has become involved in the theft and looting of cultural objects from Syria and Iraq. Even though his crimes took place in Mali rather than Syria or Iraq, Al Mahdi's verdict was recognized because his actions were also done through a terrorist group and the resolution affirmed that the act of directing unlawful attacks against cultural sites like mosques and shrines can constitute a war crime (Gerstenblith 2020, 40-41).

Punishment and Reparations

When considering the case of Al Mahdi in the wider context of legal theory, one must examine elements of his punishment and the reparations order. The ICC found him guilty of the war crimes of attacking buildings of cultural heritage and he was sentenced to nine years in prison, although the time he had spent in ICC detention following his 2015 arrest was deducted from that total. The court also factored in several mitigating circumstances when considering punishment, namely his admission of guilt, cooperation with prosecution, the empathy he expressed for the victims, and his offer to reimburse the cost for replacing the door of the Sidi Yahia Mosque. He further expressed remorse for the damage he had caused, "...to his family, his community in Timbuktu, his country and the international community." (International Criminal Court 2016).

In August 2018, the ICC announced that Al Mahdi was being transferred to Scotland, United Kingdom for the remaining duration of his prison sentence. The ICC did not choose Scotland for any particular reason other than that under Article 103 of the Rome Statute the court has a list of states that have indicated they are willing to have people convicted by the ICC serve

their sentences there, and the United Kingdom is a willing state (International Criminal Court 2019).

When determining the scope of the harm done by Al Mahdi, the ICC noted that, “[b]ecause of their purpose and symbolism, most cultural property and cultural heritage are unique and of sentimental value. As a result, they are not fungible or readily replaceable.” (Wierczyńska and Jakubowski 2020, 151).

This highlights a fundamental question for theories of punishment in relation to cultural property, namely how organizations can go about collecting reparations to replace the irreplaceable. According to the ICC, any reparations order must determine the scope of the harm done and thus identify victims eligible to be helped by potential reparations (Wierczynska and Jakubowski 2020, 151). In Al Mahdi’s case, the court acknowledged that there is a wide array of victims of his crimes, specifically referring to not only the faithful Timbuktu, but also Mali and the international community. In making that observation, the court also understood that the residents of Timbuktu were disproportionately affected. It is fair to say that although the destruction of heritage sites at Timbuktu is an event that warrants international attention and concern because of the international community’s shared world heritage, the people of Timbuktu are who need help repairing their livelihoods and religious sites. The philosophy of the court judgment does not adhere to one binary side of cultural property nationalism or internationalism. The reparation judgment pointed to the words of an expert who stated of the matter,

“[V]arying degrees of access to and enjoyment of cultural heritage may be recognised, taking into consideration the diverse interests of individuals and groups according to their relationship with specific cultural heritages, so it may make sense to prioritize reparation to those groups closer to the heritage in question while making sure to recognize broader connections” (*Public Reparations Order* 2017, 21).

Thus, the primary goal in seeking reparations is to eventually reconstruct what has been destroyed and upkeep it so that Timbuktu residents are compensated and, on an international level, that future generations may also enjoy and learn from the sites. This level of international

attention and prioritization is not awarded to every damaged heritage site, but official World Heritage List sites are prioritized. At the time of the trial, UNESCO was already working to renovate some of the demolished buildings with success (Wierczynska and Jakubowski 2020, 153).

The reparations order also found Al Mahdi to be liable for damage costing 2.7 million euros for the wider community of Timbuktu and individual residents. People whose economic activity was wholly dependent on the destroyed mausoleums and descendants of the Saints whose buildings were destroyed can claim individual reparations through the ICC's Trust Fund for Victims (TFV). The TFV reports that they are, "...currently identifying eligible victims for individual reparations, which appear to amount to several hundreds" in addition to working with partners to return internally displaced people and provide them with economic and psychological support (The Trust Fund For Victims 2016).

In 2021, a panel of three ICC judges of the Appeals Chamber reviewed Al Mahdi's case and reduced his sentence by two years. Their decision was affected by Al Mahdi's remorse, good behavior while in detention, and his prospects for resocialization and resettlement (*International Criminal Court* 2021b.). Al Mahdi's release date was thus set to September 18, 2022. There was not a formal announcement of his release in 2022 nor further information of his whereabouts. He is not directly responsible for paying back the 2.7 million euros in damage he caused because such a payment would be impossible for him. The imprisonment and presumable release of Al Mahdi bares a stark contrast to the images of the Nuremberg Trials that led to the deaths of many of those convicted. Al Mahdi's case is the first international trial whose sole focus was the destruction of cultural heritage sites and the first ICC trial where the defendant made a clear admission of guilt (*International Criminal Court* 2021a.). As the only case of its kind, it is highly

indicative of what other similar cases could look like with an emphasis on reparations and repairing those immediately affected.

Chapter 6: Ukraine's Cultural Property Under Attack Today

On February 24, 2022, Russia began an unprovoked attack on Ukraine that rapidly intensified into a war. This move did not occur in a vacuum. Instead, it was precipitated by years of harmful Russian propaganda denouncing the Ukrainians' right to exist as a sovereign nation with a distinct cultural heritage. In one particularly alarming article published less than a year before the invasion in the Russian state outlet RIA Novosti, Timofey Sergeytse falsely painted the entire population of Ukraine as complicit in "Ukronazism." In that same article, titled "What Russia should do with Ukraine" Sergeytse put forth a plan on how the "problem" of Ukraine should be "fixed" by Russia-- a strategy that outlined a violent attack against the very concept of the Ukrainian nation. The "problem" Sergeyste describes is Ukraine's existence as an independent nation and he dismisses the existence of Ukrainian culture in its entirety, calling Ukraine an "artificial anti-Russian construct" and should once again be referred to by its historical name: Little Russia (Ball 2022). Moreover, he argues that the very establishment of Ukraine 30 years ago was a "Nazi" act, as is any attempt to build such a state (Brown 2022; Snyder 2022). In this context, the term "Nazi" is removed from its original context in the Third Reich and is instead used by Russian propagandists to justify an unwarranted attack against an independent nation.

Sergeytse championed the "reeducation" of the mass population of Ukraine through repression and strict censorship, most notably in the fields of education and culture, both of which he blames for the nationalization of Ukraine. In regard to Ukrainian identity not including the fundamental support of Russia, Sergeyste believes that Ukrainians should suffer for believing that they exist as a separate people; only this can lead to the "redemption of guilt." (Snyder 2022). In regard to the article, the former Canadian Ambassador to Ukraine said, " It says if

someone strikes you as terribly Ukrainian, you can 'just off them' for the good of the cause." (Brown 2022). The cause in question is destroying Ukrainian identity in order to replace it with a Russian one. In a 2022 essay, Ukrainian writer Andrey Kurkov wrote about Sergeyste's essay and the wider scope of Russian rhetoric regarding Ukraine, "War always starts with words. There is nothing surprising about that; words, after all, have shaped human civilization since its earliest beginnings. But words that precede a war are used as weapons: they are chosen to humiliate and destroy the enemy-- to prove it has no right to exist." (Kurkov 2022b, 15).

Furthermore, in a speech given three days before the invasion, Russian President Vladimir Putin stated, "I would like to emphasize again that Ukraine is not just a neighboring country for us. It is an inalienable part of our own history, culture and spiritual space," and that during and after the dissolution of the Soviet Union "Ukraine actually never had stable traditions of real statehood" (The Kremlin 2022). In these statements, he conflates the culture and history of Ukraine as being Russian-- erasing the uniqueness of Ukrainian identity. Russia's commitment to this rhetoric is further exemplified by the repeated attack and theft of tangible reminders of this identity: Ukrainian cultural property.

According to many Ukrainian scholars, the current Russia-Ukraine conflict began with the 2014 annexation of Crimea. The annexation came amidst the Ukrainian Maidan Revolution, also known as the Revolution of Dignity. The Maidan Revolution took place within a larger wave of public protests and demonstrations across Ukraine in late 2013 and early 2014. The protests were primarily due to then Ukrainian President Viktor Yanukovich's decision to reject a trade agreement with the European Union in favor of strengthening the trade relationship between Ukraine and Russia. The Maidan protests are emblematic of evolving Ukrainian identity because the protests were born out of Ukrainian nationalism but without ethno-linguistic

distinctions and thus inclusive of the many languages and ethnicities, including Russian language and ethnicity, that form Ukraine. Moreover, the movement reflected a rejection of the state as the sole institution of the nation, rather emphasizing the wide array of identities in Ukraine and Ukrainians' desire to build relationships with nations and organizations like the EU rather than Russia (Wynnyckyj 2019, 250). After months of protests, Yanukovich fled to Russia and was removed from the presidency. Years later in 2019, Yanukovich was tried in absentia by Ukrainian Court and found guilty of treason for being complicit in the 2014 Russian intervention in Crimea. The court found that he asked Putin to send Russian troops to invade Ukraine once Yanukovich had left the country (Roth 2019).

On the evening of February 27, 2014, Russian military personnel in unidentifiable uniforms occupied several government buildings in Crimea. They threatened violence if anyone attacked them but gave no outright demands and claimed to be part of a Crimean militia rather than agents of the Russian government. After seizing government buildings, they announced there would be a referendum on the status of Crimea and dismissed the Crimean government (Useinov 2016, 191-192). There continued to be an influx in unmarked Russian military personnel in Crimea, who attacked military and communication centers. The referendum took place only weeks later on March 16 and there were only a handful of polling locations. The Russian government reported that 90 percent of Crimeans voted to join Russia but this statistic was not supported by any other nation and vehemently challenged by Ukraine. The annexation was viewed by many in Russia and the international community as a step for Putin's restoration of the Soviet Union (Mirovalev 2024b). In an address two days after the referendum, Putin stated that

“In people's hearts and minds, Crimea has always been an inseparable part of Russia. This firm conviction is based on truth and justice and was passed from generation to

generation, over time, under any circumstances, despite all the dramatic changes our country went through during the entire 20th century.” (The Kremlin 2014).

He not only referenced Crimea as inseparable from Russia, but referenced Crimean locations that are important to Russian history such as the graves of Russian soldiers buried in Crimea and whose “bravery” helped bring Crimea into the Russian Empire. Throughout the speech Putin also references the cultural ties shared by Ukraine, Crimea, and Russia such as orthodoxy and the Russian language.

Attacks On Ukrainian National Identity

In a speech three days before Russia invaded Ukraine in February 2022, Putin similarly challenged Ukraine’s national identity by attributing the creation of Ukraine to poor leadership by the Soviet Union and then with a two-pronged narrative attacking that history:

“At the same time, the Ukrainian authorities – I would like to emphasize this – began by building their statehood on the negation of everything that united us, trying to distort the mentality and historical memory of millions of people, of entire generations living in Ukraine. It is not surprising that Ukrainian society was faced with the rise of far-right nationalism, which rapidly developed into aggressive Russophobia and neo-Nazism.” (The Kremlin 2022).

First, he accused Ukraine’s national history of being a false narrative to sow division between Ukraine and Russia. Then, he stated that this history is dangerous for the Russian people. By questioning the significance of the national identity, he challenged Ukraine's power and sovereignty.

For Ukraine, the path to a political and cultural identity of “Ukraine-ness” has been tumultuous and varies by region. Still, most people in Ukraine see themselves first as Ukrainian, regardless of the influence of the Russian language and culture. In areas of Ukraine where the primary language is Russian, many people still identify with Ukrainian nationality. The

Ukrainian nation has only existed in its current form since 1991 following a Soviet referendum approved by 92.3% of Ukrainian voters (Mankoff 2022). In recent years, the Ukrainian legislature has tried further to consolidate their national identity. In 2019, Ukrainian was declared the official language. The Ukrainian identity is complicated by language; many ethnic Russians in Ukraine, whose primary language is Russian, identify as Ukrainian despite these previous factors. Part of the false narrative perpetuated by the Russian government is that Ukraine prosecutes Russian speakers while the majority of Ukrainians in central and eastern Ukraine primarily speak Russian. As scholar Myroslav Shkandrij observes, this Russian narrative implies that people in central and eastern Ukraine do not want to coexist in a linguistic space with Ukrainian speakers and resembles the old Soviet approach to the Russian language-- that Russian represents high culture and official life and is thus elevated (Shkandrij 2016, 126).

Ukrainian writer Andrey Kurkov identifies himself as ethnically Russian and writes in Russian because it is his first language. He has been pressured to write instead in Ukrainian for years, especially following the Russian invasion in 2022. He feels that writing in Russian does not make him any less Ukrainian and remarks that the identity of independent Ukraine is in a constant state of evolution, and part of that is recognizing the Ukrainian as an individual:

“Ukraine itself is a beautiful country with a complex character and history. Everyone has their own image of the Ukrainian state in their head, and everyone considers their image to be the correct one. In other words, we are a society of individualists” (Kurkov 2022a).

Moreover, Kurkov remarks on how living with the concern of Russian influence has shaped independent Ukraine. Although in its origin, Ukraine was thought to be primarily based on ethnic ties, modern Ukraine is supported by civic ties. Furthermore, the emphasis on civic relations goes back to the early days of Ukraine- when the people living there bonded over their subjugation by both the Russian and Habsburg empires (Pavlyshyn 2023). In the early nineteenth

century, the Russian Empire banned the Ukrainian language and other subjects from being taught in schools. There were further crackdowns on the Ukrainian language, and in the early 20th century, it was banned in parts of eastern Ukraine. This fueled the nationalist movement, and although Lenin initially encouraged Ukrainian nationalism, his government later suppressed it as well. (Manchester University 2022). The memory of the Soviet era is not far off, and modern Ukrainians, especially young people, are increasingly interested in consuming media and thoughts that are not connected to Russia. In this way, much of the contemporary Ukrainian identity reiterates that Ukraine is not Russia while keeping a place for the many Ukrainians with strong ties to Russian culture and language:

“Ukraine, as an independent state, has matured before my eyes. I lived in Soviet Ukraine for nearly 30 years and have now lived in independent Ukraine for 31 years. Post-Soviet Ukrainian literature and culture have not only come back to life but flourished, and now a completely different, European generation of new Ukrainians, for whom everything Soviet is foreign, has grown up.” (Kurkov 2022b).

The “De-Russification” of Ukraine

There is no concrete answer as to what the evolving national identity of Ukraine looks like because Ukraine’s identity has been built on resisting Russian influence, and the war with Russia has led to a significant increase in Ukrainian nationalism. Some scholars point out how President Putin has perhaps done the most to unite Ukraine by giving them a common enemy. In an April 2022 poll by a Ukrainian research organization, 80% of surveyed Ukrainians reported feeling proud of their nation compared to only 34% in August 2021, and 91% of respondents stated that they did not share the sentiment that “Russians and Ukrainians are one people” (Rating Group 2022). In another essay Kurkov published in 2022, he remarked that although he did not vote for Ukrainian President Volodymyr Zelensky or support him before the war, he now supports him because of his wartime efforts against Russia and Putin (Kurkov 2022b). Although

western and northern parts of Ukraine identify strongest with pro-Ukrainian independence, the east and south also have a pro-Ukrainian statehood majority of more than two thirds, and this has only increased in recent years (Wynnyckyj 2019, 252). In many ways, the Russian attack on Ukrainian identity has reiterated the meaning of that identity for the average Ukrainian.

Indeed, President Zelensky has made efforts to consolidate the Ukrainian national identity as being Ukrainian more so than Russian. In April 2023, Zelensky signed two bills into law to strengthen Ukrainian culture in the nation: one that made knowledge of the Ukrainian language a requirement for citizenship and another that banned Russian place names, specifically those that (regarding Russia) “perpetuate, promote or symbolize the occupying state or its notable, memorable, historical and cultural places, cities, dates, events,” and “its figures who carried out military aggression against Ukraine.” (Kotiuzhanska and Gettleman 2023).

This language is on trend with several recent demonstrations in Ukraine where people have acted to decolonize and “de-Russify” Ukrainian places. In December 2023, Odesa, a Ukrainian city where most of the inhabitants speak Russian, took down a statue dedicated to eighteenth-century Russian Empress Catherine the Great that had been at that site since 2007. Catherine the Great founded Odesa in 1794, so she is heavily featured in the city's iconography. Odesa has had stronger cultural ties to Moscow than other Ukrainian cities over the centuries, but Russian aggression has changed that, and there are several recent cases in which monuments to Catherine the Great or her actions have been moved from public view. Before that particular statue was removed, it had been vandalized several times and its removal came after a public poll showed that just over half of the city's residents wanted the statue destroyed altogether (*Euronews* 2022). The mayor of Odesa, who had once been hesitant to remove the statue, said on the matter, “How could I explain to parents who have lost their children or children who have

lost their parents why there is a Russian empress standing in the middle of our city?” (Walker 2023). Odesa has also renamed many of its streets to further “de-Russify” with a few notable exceptions, such as Pushkin Street because its namesake, Alexander Pushkin, may have been Russian but lived in Odesa and wrote many verses in the city-- making his history within the city more about Odesa than Russia (Walker 2023).

Odesa is far from the only place in Ukraine that hopes to consolidate its identity and history without Russian influence. In Kyiv, a Telegram group called Decolonize Ukraine has over 5,000 members and frequent posts in which users deface Kyiv landmarks that they feel convey Russian influence. In one posted video, a man uses a blowtorch to burn the Russian words off of a monument; in another, a different monument is toppled over altogether and breaks into pieces of stone (Mellen and Murphy, 2023). Less than a week after the initial attacks, the city of Kharkiv in northeastern Ukraine renamed a street formerly named after 19th-century Russian poet Alexander Pushkin, a figure whose modern following is seen by Ukrainians as “cultural imperialism”. The street is now named after Hrigory Skovoroda, a Ukrainian philosopher and educator (Mirovaley 2024a). The movement to “de-Russify” public spaces in Ukraine is not new but indicates a new era of Ukrainian national identity. A nation founded on civic and ethnic ties apart from Russia now hopes to dismantle parts of that identity that reflect the Russian imperialism it now faces on the war front.

Following the initial Russian invasion of Ukraine, many former USSR states opted to remove or outright destroy public monuments that glorified the USSR. Before the invasion, these USSR monuments represented both the good of the Allied victory over the Nazis and the resulting hardship of the USSR occupation that consisted of repression and gulags (Joyner 2022). There has been a recurring debate in the former USSR nations since the Cold War ended in 1989

as to whether these Soviet monuments are appropriate. For many people in these nations, the invasion of Ukraine seems to signal events similar to hardships they endured under Soviet occupation for Ukrainians and for that reason both local and national communities have decided to move their USSR monuments, a decision that has been met with anger by Russian President Vladimit Putin. In February of 2024, Estonian Prime Minister Kaja Kallas, Lithuania's culture minister, and members of the previous Latvian parliament were put on a Russian wanted list for destroying monuments to the USSR in their respective countries and thus contributing to the "desecration of historical memory" (Lebedev and Sytas 2024). The crime carries a five year prison sentence in Russia. One cannot help but note the double standard the Russian government applies to the removal of Soviet Era monuments while Russian forces are documented by Ukrainians as they destroy Ukrainian cultural art and property.

Cultural Heritage Theft and Destruction in Ukraine

Since the war began in February 2022, UNESCO estimates over 351 cultural sites in Ukraine have been damaged, the majority of which are religious sites, buildings of historic/artistic interest, and museums (Larcan 2024). Reports of Russian military aggression in Ukraine are often accompanied by reports of museums being looted or heritage sites being damaged if not destroyed. One such example of this is Kherson, Ukraine, where Russia stole over 10,000 objects from Kherson's Art Museum during the 8-month occupation. For the first three months of the occupation, museum employees were able to mislead Russian soldiers by claiming hidden artwork had been moved to other cities for renovations (Nemtsova 2023). Still, in the end, they could not prevent the theft. The museum director fled with a digital copy of the museum's archive hidden on her person. The Russians replaced her with a Ukrainian woman whose former occupation was as a cafe singer. At one point, a Moscow official who said he was

a Russian Ministry of Culture representative came and ordered the new director to provide a list of all the art the Russians were taking from Kherson to Moscow. According to a witness, those at the museum asked the representative to stop the theft of 8,000 objects, but he stated, “his bosses would be mad at him if he did not take enough.” (Nemtsova 2023).

The Kherson Art Museum is familiar with theft. During World War II, the Nazis looted the museum’s collection, and according to the museum’s director Alina Dotensko, it took years to recover stolen items across Europe and they were only able to recover part of the collection. In the 1960s an art collector originally from Kherson named Maria Kornilovskaya gave hundreds of paintings from her collection to the Kherson Art Museum in order to help them rebuild their collection. For many of the paintings in Kornilovskaya’s collection, the provenance was unknown if not dubious. She was in Leningrad when the city was under the siege of Axis Powers 1941 to 1944 and took paintings from the homes of people who had starved or been killed. The donation to her hometown museum consisted of over 500 paintings (Nemtsova 2023). Following the liberation of Kherson, the museum’s director, Olga Goncharova, entered the largely looted space with the Secret Service of Ukraine to find well over half of the collection gone, displays destroyed, and many newly emptied picture frames. When the museum’s director returned after the Russians left, she said employees observed Russian soldiers, “...loading such masterpieces, which there are no more in the world, as if they were garbage,” and further added that when she saw how much had been stolen, “I almost lost my mind.” (Mykolyshyn and Gettleman 2023).

For Ukraine, requesting that its cultural heritage be returned from Russia is not new. One Ukrainian art historian, Dmytro Gorbachev, recalled his failed attempts to have a few mosaics taken by Moscow in 1938 returned to their original home in Kyiv’s Saint Michael’s Monastery (Nemtsova 2023). Specifically , the mosaics were taken by the Nazis, recovered by the United

States military's Monuments Men, and given to the USSR. The policy in place at the time was for the Monuments Men to return recovered artwork to the nation of origin with the assumption that the nation would return the artwork to the correct individual or institution. Unfortunately, the Soviet point of view was that Ukrainian artwork was not Ukrainian, but rather Soviet and, therefore, property of the USSR. In turn, Ukraine's request for repatriation was denied because Russia claimed the mosaics had always been Russian. Regarding the failed attempt, Gorbachev observed, "Russians treat Ukraine's art as their own but, sorry since the U.S.S.R. fell apart, everything on our land has been ours, so this is theft, and they won't be able to prove that any of this art is their property at an art auction." (Nemtsova 2023). Similarly, librarians in Kyiv say there are still potentially over a million unrecovered books that Rosenberg's Einsatzstab stole and shipped out of Ukraine. It is unknown if they were ever returned because they could not be found or if they were found but returned to the Soviets (Grimsted 2006, 284). This historic refusal to recognize individual Ukrainian identity, even under the arc of the Soviet Union, is highly reminiscent of the power dynamic Russia is attempting to exert over Ukraine. Putin's aforementioned reference to Ukraine as "Little Russia" disregards Ukraine's individual identity, culture, and name in a similar manner.

In April of 2024, the Kherson Museum posted via their Facebook page stills from a Russian propaganda video recorded in a Crimean museum that showed artwork stolen by Russian forces at some point in the ongoing conflict. The Kherson Museum has identified over 100 items in the foreground and background of the video that were stolen from Kherson or other art Ukrainian museums (Kherson Art Museum 2024). According to the Facebook posts, the segment of the propaganda film aired in Russia in September 2023 and focused in part on how

the art shown depicts Soviet citizens. The emphasis on Soviet identity notably harks back to a time in which an independent Ukraine did not exist.

Cultural property crimes in Ukraine extend beyond theft- there are also many sites of Ukrainian cultural significance that Russian military forces have bombed. The Transformation Cathedral in Odesa, Ukraine, is not only a physical representation of the Ukrainian Orthodox Church but of national perseverance. Originally built in 1808, the cathedral was heavily damaged and looted under the orders of Joseph Stalin in 1936 but was restored (Parker 2023). After the time of Stalin, it's restoration and popularity led to the cathedral's association with the resilience of the Ukrainian people despite Soviet oppression. When Russian forces bombarded that same cathedral in July of 2023, the physical act was accompanied by a symbolic strike on Ukrainian national culture because of the perseverance it represents.

Kharkiv is another city whose tangible culture has been damaged by Russian aggression. Kharkiv is located in northeastern Ukraine and the second largest city behind Kyiv. It is made up of many historical buildings, cultural centers, the oldest permanent opera company in Ukraine, and a popular zoo (Gessen 2022). Although Kharkiv has been the target of intermittent attacks since 2022, in January of 2024 the city was the victim of a particularly troubling attack by fifteen hypersonic missiles. Attacks and the resulting casualties have become so common that sometimes the subway system serves as a bomb shelter, with some stations even acting as classrooms for children during air raids. The former deputy chief of Ukraine's General Staff of the Armed Forces, Lieutenant-General Ihor Romanenko, described the frequent attacks as "moral and psychological" stressors meant to destroy the city's spirit, and that "Kharkiv is their priority, because [President Vladimir] Putin can't forgive the fact that a Russian-speaking city didn't want to become part of the Russian world," (Mirovalev 2024a).

Frequent attacks in the broader oblast of Kharkiv have also damaged if not destroyed cultural property. Just before midnight on May 6, 2022, the National Literary and Memorial Museum dedicated to Hryhorii Skovoroda was hit by a Russian explosive and quickly caught fire. The explosive and fire heavily damaged the exhibition spaces in the museum in addition to destroying two other nearby buildings, one of which being the guesthouse where Skovoroda purportedly lived prior to his death (“Destroying Cultural Heritage” 2024).

The destruction of a museum dedicated to renowned poet, philosopher, academic, and theologian Hryhorii Skovoroda is particularly poignant because Skovoroda is a historical figure revered for his contributions to the Ukrainian way of life. Skovoroda is a common namesake throughout the nation and his face even appears on the 500 hryvnia note. Ukrainian scholar and professor Olenka Penvy describes the attack as an event that “strikes at the intellectual core of Ukrainian identity.” (“Destroying Cultural Heritage” 2024). One of the many images of the charred museum depicts a statue of Skovoroda standing that was able to survive the fire generally unscathed. This image quickly became popular on Telegram among Ukrainians, who see the statue’s survival as a sign of the defiance and perseverance of the Ukrainian nation (Godin 2022).

Because of Russia’s acts of cultural property theft and destruction in Ukraine, the nation has been accused of violating the 1954 Hague Convention, which both nations have signed. The Hague 1954 Convention does state, among other things, that an occupying state should not only respect but protect the cultural property of the invaded nation, but Russia has done the opposite on both counts. Russia disrespects the cultural property of Ukraine by stealing it and framing it under the guise of Russian accomplishment and it does not protect Ukrainian cultural property, rather burning museums and other buildings of cultural significance to the Ukrainian nation.

It is difficult to predict how the Russia-Ukraine war will end, but there is certainly evidence that Russian military forces have violated several international laws in relation to cultural property alone, namely UNESCO 1954 and 1970. The breadth of the recorded thefts alone provide evidence for a situation analogous to the large-scale theft by the Nazi Einsatzstab. Laws are disregarded by Russian military operations in Ukraine as soldiers target cultural property sites and museums without regard for culture. Following the looting of the Iraq Museum in 2003, the United States war manual was updated to include provisions for protecting cultural property, but no such provision exists for the Russian military because the destruction and looting does not come from gross negligence, but purposeful erasure. The ongoing systematic theft and destruction of Ukrainian cultural property is reason for international concern extending to legal organizations. There is enough reason to have an ICC investigation, if not case, for war crimes against Ukrainian cultural property. Communities in Ukraine have been affected similarly to the communities in Timbuktu that the ICC deemed deserving of reparations.

Further Implications

Although the full breadth of Russia's intentions for Ukraine are to be determined, the Russian government's language and military actions are arguably wrought with genocidal intent. According to Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, genocide entails "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group." This is elaborated to apply to, among others, acts such as killing members or causing severe physical or mental harm to members of a group and forcibly transferring children of the group to another group (UNOGRP). Both elements are present in the Russian invasion of Ukraine, the latter-- forcible transfer of children-- to such a degree that in March of 2023, the ICC issued a warrant for the arrest of Vladimir Putin and the

Russian Commissioner for Children's Rights, Maria Alekseyevna Lvova-Belova. More specifically, the warrant states the pair violated the Rome Statute's laws on aggression provided (ICC 2023). This arrest warrant signaled two key points: first, that the ICC is willing, at least in some capacity, to hold the leader of a nation as powerful as Russia to account for war crimes in the modern day, and second, that the ICC recognizes Russia's actions in Ukraine as an aggressive violation of international law. The forcible transfer of children from their homes elsewhere is characteristic of genocide because doing so not only damages families of a given group but also severs children from that group from their identity-- which in this case is Ukrainian.

In tandem with Russia's forced removal of Ukrainian children from Ukraine, genocidal rhetoric against Ukrainians and the killing of Ukrainian civilians is Russia's approach to cultural heritage in areas of Ukraine they occupy. One of the key concerns about the aforementioned propaganda piece "What Russia Should Do With Ukraine" is that scholars found it to be riddled with outright genocidal language. Historian Timothy Snyder described the article as Russia's "a genocide handbook for its war on Ukraine" (Snyder 2022). The crux of this genocidal intent is demonstrated in Russia's repeated and systematic destruction and theft of Ukrainian cultural heritage. This destruction takes place in opposition to several critical bodies of international law.

It is important to note that the United Nations Office on Genocide Prevention requires more than just cultural destruction to deem a movement as genocidal. Cultural destruction must be accompanied with a special intent to destroy a group. The forcible transfer of children demonstrates the strongest argument for genocidal intent, but the systematic destruction of Ukrainian cultural property and, as a result, attempt to destroy Ukrainian identity, is also relevant.

Chapter 7: Conclusion

In its many forms, cultural heritage can contribute to unity, power, and identity. The ongoing theft and destruction of cultural property in Ukraine is emblematic of the Ukrainian fight for national identity against the Russian subversion of that identity. Russia does not steal Ukrainian cultural property for funding, but rather to show it in mediums like propaganda videos and place it in the historical narrative of Russian greatness. In the same vein, Russia destroys Ukrainian cultural heritage sites because those places represent Ukrainian national identity and perseverance against a long history of Russian aggression.

The long history of cultural property law and theory is built on different narratives of power. When the Nazis stole art from occupied territories and Jewish people, they sought to reinforce their own authority, supremacy, and power. The looting of the National Museum of Iraq is also indicative of powerful narratives because the United States wielded its military power without thinking about the cultural value of Iraqi antiquities or how military action would endanger such antiquities. Moreover, Al Mahdi's actions in Timbuktu demonstrated Ansar Dine's desire to exert power over the people and culture of Timbuktu and destroy heritage sites that represented that culture. Cultural heritage law and theory reflects power dynamics but also aims to protect those without significant power.

Going forward, the situation in Ukraine also provides an example of why cultural property laws on an international scale are vital for the preservation of cultural property. Although existing international conventions outline what cultural property is and many ways that it is protected, there are legal gaps on how that should happen and who is primarily responsible when these laws are broken. In the ICC case of Al Mahdi, the court's investigation found him to

be primarily responsible because he helped make the list of targets and led the attacks, but he was not the only person that made the attacks on Timbuktu possible. Ukraine is not formally a party to the Rome Statute but has encouraged and accepted the ICC's prosecutors to investigate alleged war crimes against Ukraine by Russia in 2014 regarding the annexation of Crimea and again in 2022 regarding the current war. With this in mind, it is not beyond reason to expect Ukraine to accept a similar investigation to Russian cultural property related war crimes on Ukrainian soil. A potential ICC trial regarding cultural property crimes in Ukraine would also provide another key example of establishing responsibility for such a crime. In the case of relocation Ukrainian children displaced by war with Russian families, the ICC chose to release warrants for President Putin and Russian Commissioner for Children's Rights, Maria Alekseyevna Lvova-Belova, any warrants related to the cultural property theft could also very well include Putin but the Russian military or cultural personnel in charge of the theft and destruction operations against Ukrainian cultural property is unclear at this time. An ICC case on the matter would also provide an example of a nation's officials being tried for cultural property crimes whereas Al Mahdi acted on behalf of a nongovernmental terrorist organization.

Drawing from the Nuremberg Charter and the 2003 Iraq invasion planning, there is something to be said about how nations and their legal scholars prioritize cultural property. It is absolutely true and understandable that the Holocaust was the more pressing matter for the framers of the Nuremberg Charter, but that does not mean that the cultural property theft was not important. Similarly, for the American military officials planning the Iraq war, culture was not something they considered important enough to see as its own issue and that led to the theft/destruction of over 15,000 pieces of cultural property. The trial of Al Mahdi is the only case

of its kind and demonstrates only one way that justice may be found for communities affected by cultural property attacks.

There is a need for more proactive and comprehensive cultural property law because cultural property crimes, like all war crimes, come with great consequences. Although at times counterintuitive, both cultural property nationalism and internationalism put an emphasis on cultural property as an important facet of society. Regardless of whether the cultural property in question is important to a small community, a nation, or the world, it has importance and must be protected. Moreover, in most cases once cultural property is destroyed it is gone forever, so laws and regulations protecting it should be proactive.

The theft and destruction of cultural property rarely occurs in a vacuum, but is a byproduct of a larger pattern of identity erasure and dismissal. This was true in territory occupied by the Nazis, the way culture was forgotten in the 2003 Iraq invasion, the targeted destruction of Timbuktu, and continues to be true for Russia's attempts to erase Ukrainian national identity by erasing Ukrainian cultural property. Andrey Kurkov observed that over the past 30 years, Ukraine's political identity has been largely shaped by Ukrainian self-determination and resilience against Russian aggression; Ukrainian identity is not just existing as a Ukrainian, but existing as a Ukrainian in spite of repeated violent attempts to dilute and destroy that identity (Kurkov 2022a.,16). In this way, cultural property protections extend far beyond protecting property, but also protect the cultural identities that unify communities together in Ukraine and beyond.

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